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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-231

R. J. ADAMSZEWSKI, F. BECKER, P. BORN, C. BRAMMEL, RAY BROO, GERALD O. CROCETTI, RAY FLAKUS, PAUL GARZA, CECIL H. LEGATE, STEVE MANKO, ALBERT T. MARINO, WILLIAM McCLARY, GREGORY A. PANKOW, M. PELOSE, RICHARD PLETT, R. RUSSELL, ARDITH A. SMITH, HERBERT W. SUNBERG, AND ALL OTHER NORTHWEST AIRLINE, INC. EMPLOYEES AND ALL OTHER PERSONS WHO HAVE BEEN NOTIFIED TO APPEAR FOR A CERTAIN "TRIAL" ON JANUARY 31, 1972 AT 50 WEST OAKTON STREET, DES PLAINES, ILLINOIS,

Petitioners,

vs.

LOCAL LODGE 1487, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, THOMAS PAUL, WILLIAM AUSTIN, KEN THIEDE, AND MICHAEL J. PEAT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, R. J. Adamszewski, et. al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on April 12, 1974, rehearing denied on June 5, 1974.

OPINIONS BELOW.

The Memorandum Decision and Order of the United States District Court for the Northern District of Illinois entered on December 14, 1972 is unreported in the official reports but appears in the Appendix to this Petition. [A22] The Opinion of the United States Court of Appeals for the Seventh Circuit (and that Court's Opinion on denial of plaintiffs' Petition for Rehearing) is reported at 496. F.2d 777 (7th Cir. 1974) and appears, also, in the Appendix hereto. [A4; 1]

JURISDICTION.

The judgment of the Court of Appeals was entered on April 12, 1974. A timely Petition for Rehearing was denied on June 5, 1974, and this Petition for a Writ of Certiorari was filed within 90 days of that date. Jurisdiction is conferred upon this Court by Title 28, United States Code § 1254(1).

QUESTIONS PRESENTED.

I. Whether petitioners are entitled to injunctive relief against their union to enforce a "no-reprisal agreement" between their union and their employer.

II. Whether a no-strike award of a System Board of Adjustment provides petitioners a cause of action for injunctive relief against retaliation by their union for refusing to obey that union's strike order.

III. Whether Northwest Airlines, Inc. is an "interested employer" within the meaning of 29 U.S.C. § 411(a)(4) so as to preclude petitioners' independent cause of action based upon the fair hearing guarantee of the Labor-Management Reporting and Disclosure Act. (29 U.S.C. § 411 (a)(5))

STATUTORY PROVISIONS INVOLVED.

29 U.S.C. § 185(a):

> SUITS BY AND AGAINST LABOR ORGANIZATIONS—VENUE, AMOUNT, AND CITIZENSHIP.
>
> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. . . .

29 U.S.C. § 411(a)(4):

> (4) PROTECTION OF THE RIGHT TO SUE.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided furher*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

29 U.S.C. § 411(a)(5):

> (5) SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

45 U.S.C. § 152:

GENERAL DUTIES—DUTY OF CARRIERS AND EMPLOYEES TO SETTLE DISPUTES.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. . . .

45 U.S.C. § 184:

SYSTEM, GROUP, OR REGIONAL BOARDS OF ADJUSTMENT.

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181 to 188 of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group,or regional boards of adjustment, under the authority of section 153 of this title.

> Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in sections 151 to 163 and 181 to 188 of this title shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of sections 181 to 188 of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

STATEMENT OF THE CASE.

Petitioners, employees of Northwest Airlines, Inc. (NWA) at O'Hare International Airport, Chicago, Illinois, are members of the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM). Defendant union is a constituent local of the IAM, and the individual defendants are officers, officials, or representatives of the local union.

At all times relevant to this cause, the IAM collective bargaining agreement with NWA contained a no-strike agreement which provided:

> It is understood and agreed that the Company [NWA] will not lock out any employee covered hereby and the union [IAM] will not authorize or take part in any strike or picketing of Company's premises during the life of this Agreement until the procedures for settling disputes as provided herein and as provided by the Railway Labor Act have been exhausted. [Article XXV, Section K]

On July 8, 1970, NWA employees represented by the Brotherhood of Railway and Airlines Clerks (BRAC) struck against NWA and established picket lines at most of NWA's facilities, including those at O'Hare International Airport. IAM instructed its NWA members not to cross the BRAC picket lines, and some

followed these instructions. NWA, however, ordered its IAM employees, including petitioners, back to work, and petitioners complied with this order.

The question of whether, in view of the no-strike provision, IAM had the right to instruct its members, including petitioners, not to cross the BRAC picket lines was decided adversely to IAM by a System Board of Adjustment (SBA) to which the question had been submitted by the Court of Appeals for the Eighth Circuit. *Northwest Airlines, Inc.* v. *International A. of M. & A.W.*, 442 F.2d 244 (8th Cir. 1970) The SBA decided on December 14, 1970 that:

> IAM, in the light of the no-strike provisions of the bargaining agreement does not retain the right to instruct its members to honor the picket lines of a sister Union.

Additionally, on December 8, 1970, shortly before the SBA handed down its decision, and in the context of the end of the BRAC strike, IAM and NWA negotiated a no-reprisal agreement which provided, in part:

> There will be no reprisals, recriminations, disciplinary actions, grievances or, reprimands by either party against any employee represented by IAM because of any action or non-action during or arising from the [BRAC] strike. [Paragraph VI]

Subsequently, the local union notified petitioners in writing that they were to appear for "trial" on charges of conduct unbecoming a union member because they had crossed the 1970 BRAC picket lines on NWA's order and contrary to the union's instructions. Seeking to avoid the *in terrorem* effect of the union trials, petitioners filed this suit to enjoin the disciplinary proceedings. Petitioners invoked the jurisdiction of the district court under the Judicial Code and the Labor-Management Reporting and Disclosure Act (29 U.S.C. § 401 et seq.) and sought relief on three separate grounds: (1) enforcement of the no-reprisal agreement between NWA and IAM under the Railway Labor Act (45 U.S.C. § 151 et seq.) with 28 U.S.C. § 1337 conferring jurisdiction; (2) enforcement of the SBA award under the Railway Labor Act (45 U.S.C. § 151 et seq.) with 28

U.S.C. § 1337 conferring jurisdiction; and (3) enforcement of the safeguards against improper disciplinary action under 29 U.S.C. § 411 (a)(5) with 29 U.S.C. § 412 conferring jurisdiction.

On January 26, 1972, the district court issued an order compelling the union and its officers to hold the disciplinary proceedings in abeyance until final disposition of all issues in this case. The parties subsequently filed reciprocal motions for summary judgment. On December 14, 1972, the district court entered an order and memorandum of decision denying petitioners' motion for summary judgment and, treating defendants' motion for summary judgment as a motion to dismiss raising matters in abatement, dismissed the entire action without prejudice to petitioners' right to commence further actions. The basis for the district court's holding was that the second proviso of 29 U.S.C. § 411(a)(4), which provides that no interested employer shall directly or indirectly finance, encourage or participate in, except as a party, any action by a union member against his union foreclosed petitioners' access to judicial relief from the penal power of their union. A stipulation filed with the court stated that NWA was financing petitioners' lawsuit. The district court found that NWA was an interested employer within the meaning of the statute and not a party and, therefore, petitioners' suit should be dismissed.

Petitioners appealed, and the Court of Appeals affirmed the district court's determination that NWA was an interested employer within the meaning of 29 U.S.C. § 411(a)(4), but held that the limitation imposed by said section applies only to actions brought pursuant to the Labor-Management Reporting and Disclosure Act and does not preclude relief sought pursuant to any other federal law, including the Railway Labor Act. However, the Court of Appeals stated that the only relief sought was an injunction and held, contrary to petitioners' contention, that there was no showing of irreparable harm, no showing that the legal remedy was inadequate and, therefore, no equitable relief could be granted.

REASONS FOR GRANTING THE WRIT.

The questions and issues involved in this case are essentially the same as those involved in five other cases recently or currently pending in federal courts, both district and appellate, in five different states. In five of those cases, employee-union members filed suit to enjoin disciplinary proceedings identical to those involved in this case. In the sixth case, employee-union members filed suit to enjoin the enforcement of fines and other disciplinary sanctions imposed upon them as a result of the union trials.

In Seattle, Washington, the district court enjoined the union disciplinary proceedings; but the district court's decision was reversed by the Ninth Circuit Court of Appeals in *Buzzard* v. *Local Lodge 1040 Int'l. Ass'n of Mach. & A. Wkrs.*, 480 F.2d 35 (9th Cir. 1973) on the grounds that intra-union remedies had not been exhausted.

In Chicago, Illinois, the district court dismissed petitioners' complaint in its entirety for the reason that the suit was financed by NWA. [Memorandum Opinion reprinted at A22] The Court of Appeals for the Seventh Circuit severely limited the application of the interested employer bar (29 U.S.C. § 411(a)(4)), stated that relief was available on other alternative grounds pleaded by petitioners, but found that the dismissal of petitioners' complaint in its entirety should be upheld because petitioners had not shown grounds for any injunction. [Opinion reprinted at A4]

In Minneapolis-St. Paul, Minnesota, where NWA sought, for employees in the identical position as petitioners, the same relief which petitioners seek herein, the district court found that NWA had no standing to seek the relief requested. *Northwest Airlines, Inc.* v. *International A. of M. & A. W.*, 336 F.Supp. 1117 (D.C. Minn. 1972). A separate case by individual IAM members, *Charles D. Fletcher, et. al.* v. *International Association of Machinists and Aerospace Workers* (Case No. 3-72 Civ. 126 (D.C. Minn.)), is also pending in the federal district court

in St. Paul, Minnesota, but is being held for further developments in other circuits with the union disciplinary proceedings being held in abeyance by consent.

In Detroit, Michigan, the district court enjoined the union proceedings on stipulated facts identical to those involved in this case, notwithstanding that it had before it, and considered and discussed in its memorandum opinion, the Court of Appeals decision in the instant case. The Detroit district court found that the disciplinary proceedings complained of, which are identical to those involved in this case, were violative of the no-reprisal agreement, and held that an injunction was the only appropriate relief. IAM has filed a notice of appeal and plaintiffs have filed a notice of cross-appeal, both of which are now pending. *Verville* v. *International Association of Machinists and Aerospace Workers*,..... F.Supp. ..... (E.D.S.D. Mich. 1974) [Memorandum and Order reprinted at A28]

In Milwaukee, Wisconsin, where the employees actually submitted themselves to the union disciplinary proceedings complained of herein, the employees were fined on the local union level, which fines were affirmed on appeal at the highest level of the international union hierarchy. The employees consequently filed suit against the local lodge in Milwaukee to enjoin enforcement of the fines and disciplinary actions, which is presently pending hearing on a motion to reconsider a decision which adopted the decision of the district court in this case. *Thomas W. Ransdell* v. *Local 1904, IAMAW International Association of Machinists and Aerospace Workers,* Case No. 72-C-55 (E.D. Wisc. 1972)

In light of the multiplicity of litigation which concerns identical facts and the application of identical legal principles, all arising under federal legislation in the area of labor law, important questions are presented which call for dispositive decision by this Court. This case presents the first genuine opportunity known to petitioners for this Court not only to determine these compelling questions of federal labor law, but also to rule definitively on

a recurring question of union conduct in violation of law and contract by disciplining members for working under a no-strike contract and unilaterally disregarding a no-strike and a no-reprisal agreement.

I. Injunctive Relief Is the Sole Remedy Available to Petitioners to Enforce the No-Reprisal Agreement Between Their Union and Their Employer.

On December 8, 1970, at the end of the BRAC strike, NWA and IAM entered into an agreement which provided, in relevant part:

> VI. There will be no reprisals, recriminations, disciplinary actions, grievances or reprimands by either party against any employee represented by IAMAW because of any action or non-action during or arising from the [BRAC] strike.

In the case at bar, the Court of Appeals for the Seventh Circuit found, in effect, that the no-reprisal agreement between NWA and IAM was a contract cognizable under federal law and, as such, was enforceable in the federal courts. See also *Buzzard* v. *Local Lodge 1040 Int'l. Ass'n of Mach. & A. Wkrs.*, 480 F. 2d 35 (9th Cir. 1973) and *Verville* v. *International Association of Machinists and Aerospace Workers*, ... F.Supp. ..... (E.D.S.D. Mich. 1974)[1] where both courts, confronted with the same set of facts here involved, arrived at the same conclusion. In *Buzzard*, the court stated:

> While we have been unable to find any case for the proposition that § 301 [29 U.S.C. § 185(a)] will support a suit by a union member against his union for redress from union refusal to honor rights conferred on employees by *union* promises in the collective bargaining agreement, we are convinced that § 301 does confer such jurisdiction. The union's duty of fair representation is equally violated when it refuses arbitrarily and in bad faith to honor *its* obligations,

1. Memorandum and Order reprinted at A28.

> under a collective bargaining agreement, which are designed to benefit its members.[2]

And in *Verville*, the court stated, "If the December [no-reprisal] agreement is enforceable, as we think it is . . .", it imposed an implicit duty upon IAM not to process charges against, and thus harass, members who had crossed the 1970 BRAC picket lines. "To hold otherwise [stated the court], would sanction the Union's attempt to avoid its contractual responsibilities."

Petitioners' complaint herein pleaded the no-reprisal agreement and the fact that disciplinary proceedings had commenced and sought injunctive relief to stop the reprisals. Petitioners contended that no adequate legal remedy exists which could compensate them for any damages suffered if they are forced to submit to disciplinary proceedings in this matter. It is, and always has been, petitioners' contention, with which the district court herein apparently agreed, that the disciplinary proceedings, themselves, constitute the harm which must be averted. As a result, if an agreement prohibiting disciplinary action by a union is not enforced by way of injunction, it allows union members to be subjected to prohibited trials, and a labor contract becomes, in effect, a sham and a nullity. So also does the basic no-strike agreement become a sham and a nullity by a lack of restriction on union power to punish.

The natural and intended effect of the no-reprisal agreement is that no disciplinary action would be taken by IAM against those of its members who crossed the 1970 BRAC picket lines as required by the no-strike contract. Certainly, disciplinary action is imposed in requiring petitioners to appear and undergo a prohibited and essentially mock union trial. The no-reprisal

2. The *Buzzard* court went on to hold, however, that the district court had improperly entered a permanent injunction against the disciplinary hearings because plaintiffs had failed to exhaust intra-union remedies. Such an issue was eliminated in the instant case when the district court held that petitioners were not required to exhaust internal union proceedings because the exhaustion thereof would be a futility, and the union took no cross-appeal from that portion of the district court order.

agreement, as written, is violated not only after petitioners have been tried and punished, but if a trial takes place at all. Petitioners assert that the Seventh Circuit in the instant case, as did the Ninth Circuit in the *Buzzard* case, ignored the hard-core realities of the IAM disciplinary proceedings and took a myopic view of the recrimination and repression involved in such proceedings when they refused to grant the union members the only relief available to prevent the real damages, namely, the fear, ridicule, harassment and embarrassment of being treated as union scabs, when, in fact, they are not.

The position here urged by petitioners has been approved in another circuit in *Verville* v. *International Association of Machinists and Aerospace Workers,* ..... F.Supp. ..... (E.D.S.D. Mich. 1974), a case which involved the same set of facts here involved. In that case, the court held that plaintiffs had a cause of action based upon the no-reprisal agreement between NWA and IAM, and that the suit based upon said agreement was not barred by plaintiffs' failure to pursue internal remedies because the exhaustion of internal remedies would have been futile. In that regard, the *Verville* court stated:

> IAMAW agreed that it would not discipline plaintiffs ". . . because of any *action or non-action* during or arising from the strike." We find that discipline is inherent in the requirement that plaintiffs undergo a union trial. It is indeed discipline to subject plaintiffs to such harassment, intimidation, fear, and the expenditure of time and money to defend themselves.

The *Verville* court then granted plaintiffs a permanent injunction restraining IAM from instituting or conducting disciplinary proceedings of any kind or from otherwise retaliating against, harassing, intimidating or coercing plaintiffs because of their conduct in crossing the 1970 BRAC picket line. Further, in exercising its equitable jurisdiction, the court specifically noted that it was in disagreement with the conclusion of the Seventh Circuit in this case when the Seventh Circuit stated that requiring petitioners to proceed through the union disciplinary proceedings did not, in and of itself, constitute irreparable harm. The

Verville court stated, "To the contrary, we find that subjecting plaintiffs to the ordeal of a union trial and possible union appeals, the very prosecution of which is in violation of the settlement agreements, exposes them to harassment, criticism, and ridicule which constitute irreparable harm."

The defendant union in *Verville* filed a Notice of Appeal on June 27, 1974 with the intent that the Court of Appeals for the Sixth Circuit review the *Verville* decision. Since the *Verville* court specifically noted its disagreement with the decision of the Court of Appeals in the instant case, and since opposite results were reached on identical facts, petitioners point out the existence of a conflict between federal courts in the Seventh and Sixth Circuits as to the relief to be granted to union members who seek to enforce the identical no-reprisal agreement.

II. The System Board of Adjustment No-Strike Award Provides Petitioners with a Ground for Injunctive Relief Against Union Retaliation by Their Union for Refusing to Obey That Union's Strike Order.

Petitioners contend that the SBA award upholding the no-strike provision of the underlying collective bargaining agreement affords them a cause of action for the injunctive relief requested or else the award becomes wholly meaningless. There is no question but that an award of an SBA rendered under the authority of 45 U.S.C. § 184 is enforceable in the federal courts (*Machinists Associated* v. *Central Airlines,* 372 U.S. 682, 83 S.Ct. 956, 10 L.Ed.2d 67, rehrg.den. 373 U.S. 947, 83 S.Ct. 1533, 10 L.Ed.2d 702 (1963)), and that an SBA award is final and binding upon federal courts where enforcement is sought. *Rosen* v. *Eastern Air Lines Inc.,* 400 F.2d 462, pet. for cert. den. 394 U.S. 959, rehrg.den. 395 U.S. 917 (5th Cir. 1968) However, the Court of Appeals in the instant case, and the Ninth Circuit in *Buzzard* v. *Local 1040 Int'l. Ass'n of Mach. & A. Wkrs.,* 480 F.2d 35 (9th Cir. 1973), have held that SBA award here in question does not support a cause of action for the injunctive relief requested by petitioners.

The System Board here involved was established by NWA, the union, and the employees pursuant to the statutory mandate that "every carrier and . . . its employees, acting through their representatives . . ." establish such a board of adjustment. 45 U.S.C. § 184 The award of the System Board so established finally settled for IAM, NWA, and employees alike a recurrent dispute arising under a collective bargaining contract. All are bound by and entitled to the benefits and detriments of the terms of the collective bargaining contract or none are, and all must be bound by the SBA award holding that the no-strike clause of that collective bargaining contract forbids a union order to strike. To rule otherwise is to deprive union members of the protection of the terms of their labor contract and dispute settling procedures and would vitiate the finality and enforceability of the adjustment procedure required by 45 U.S.C. § 184 and the SBA system and destroy the statutory scheme for the protection of interstate commerce.

The purpose of the statutory scheme is discussed in *Machinists Assoc.* v. *Central Airlines,* 372 U.S. 682, 83 S.Ct. 956, 10 L. Ed.2d 67, rehrg.den. 373 U.S. 947, 83 S.Ct. 1533, 10 L.Ed.2d 702 (1963). There, this Court in discussing the history and congressional intent of 45 U.S.C. § 184 and the effect of an SBA award, stated:

> ". . . the provisions of a § 204 contract, [45 U.S.C. § 184] such as those governing the composition of the adjustment board, the procedures to be employed as to notice and hearing or for breaking deadlocks, *or the finality to be accorded board awards,* are to be judged against the Act and its purposes and enforced or invalidated *in a fashion consistent with the statutory scheme.* There may be, for example, any number of provisions with regard to the finality of an award that would satisfy the requirements of § 204 but we are quite sure that some such provision is requisite to a § 204 contract and that the federal law would look with favor upon contractual provisions affording some degree of finality to system board awards. Congress has long

> since abandoned the approach of the completely unenforceable award which was used in the 1920 Act. Elgin, J. & E. R. Co. v. Burley, 325 US 711, 89 L. ed. 1886, 65 S Ct 1282, supra. Adjustment board decisions were expressly made final and binding in the 1926 Act, the National Railroad Adjustment Board awards were made enforceable in the federal courts by the 1934 amendments, and the awards under voluntary arbitration agreements were likewise made expressly enforceable by the statute. There is no reason to believe that in 1936 Congress discarded for an entire industry an element essential to a reliable system of settling disputes under existing contracts or that if contemplated awards by adjustment boards the enforceability of which depended entirely upon the desires of the parties or upon state statutes or court decisions. Quite the contrary, the Act, its history, and its purposes lead us to conclude that when Congress ordered the establishment of system boards to hear and decide airline contract disputes, it "intended the Board to be and to act as a public agency, not as a private go-between; *its awards to have legal effect, not merely that of private advice.*" Bower v. Eastern Airlines, Inc., 214 F.2d 623 (CA 3d Cir); Washington Terminal Co. v. Boswell, 75 App. DC 1, 10, 124 F.2d 235, 244." *Machinists Associated* v. *Central Airlines,* 372 U.S. at pp. 694-695, 10 L.Ed.2d at pp. 75-76 [Emphasis supplied]

The only way to give effect to congressional intent of finality to an SBA award so that such finality is meaningful in the air transport industry is for the courts to broadly apply such an award to all who are bound by it. The SBA award herein, holding that the union could not lawfully instruct its members to strike in violation of a no-strike clause, can only be given meaningful effect by a ruling of this Court that the award prevents the union from disciplining its members after the illegal strike is over for refusing to obey the illegal strike order.

It follows that, if the SBA award in question is to be given any real effect, the union cannot be allowed to discipline its members for disobeying a strike order which has been finally

held invalid by the award in question. Allowing the disciplinary hearings to proceed would frustrate the award and render it meaningless. It would constitute a mere private opinion rather than constituting the final and enforceable award which was contemplated by Congress when it enacted 45 U.S.C. § 184.

The Court in *Verville* v. *International Association of Machinists and Aerospace Workers,* ..... F.Supp. ..... (E.D.S.D. Mich. 1974) based its decision to dismiss that portion of the union members' complaint which attempted to enforce the SBA award upon the ground that both the Ninth Circuit in *Buzzard* and the Seventh Circuit in the instant case found that the SBA award did not address itself to the possibility of retaliatory action. Since notices of appeal and cross-appeal have been filed in the *Verville* case, and since the issue of the enforceability of the SBA award will doubtless be raised on cross-appeal, there is, again, the possibility of a conflict between the Sixth and Seventh Circuits, which petitioners suggest should be anticipated and forestalled. However, even without considering the possibility of conflict, petitioners submit that in light of the numerous pending cases involving identical facts and principles as are involved herein, that this is a case which should be decided by this Court to settle vital and recurred questions of federal law.

III. NWA Is Not an "Interested Employer" Within the Meaning of 29 U.S.C. § 411(a)(4) So as to Preclude Petitioners' Independent Cause of Action Based Upon the Labor-Management Reporting and Disclosure Act.

One of petitioners' claims for relief was based upon the fair trial guarantee to union members expressed in 29 U.S.C. § 411 (a)(5) which provides:

> (5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with

> written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

However, the right to bring suit against a union and its officers to enforce the rights guaranteed by 29 U.S.C. § 411(a)(5) is qualified by a proviso set forth in 29 U.S.C. § 411(a)(4) which provides, in relevant part:

> *Provided*, . . . That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

It is petitioners' contention that, in light of the no-reprisal contract and the SBA award, *any* disciplinary proceeding would, in the first instance, be an unfair hearing barred by 29 U.S.C. § 411(a)(5)(C). Further, while petitioners freely concede that NWA is financing the instant litigation, petitioners deny that NWA is an interested employer within the meaning of 29 U.S.C. § 411(a)(4) so as to bar petitioners' suit to enforce the fair hearing guarantee of 29 U.S.C. § 411(5)(C).

The term "interested employer" was previously construed in *Farowitz* v. *Associated Musicians of Greater N.Y., Local 802*, 241 F.Supp. 895 (S.D.N.Y. 1965). Faced with the question as to whether plaintiff's suit was barred because of the participation or financing of an employer, the *Farowitz* court determined that the "interested employer" proviso must be strictly construed and that the language should be given a construction as consistent as possible with the policy of the statute in order to guarantee the right of the union members to sue the union.

The *Farowitz* court narrowly construed the term "interested" and determined that, in the context of the facts before it, the employer was not so interested and that the suit was not of a harassing nature. The *Farowitz* court stated, at page 908:

> Farowitz [the aggrieved employee] has brought the present action to win reinstatement to the union and for damages. What is at stake in this case is his career and livelihood as

> a musician; Carrol, Cutler and Peterson [the employers] have no interest in these things. The satisfaction they might feel or the incidental propaganda benefit that might accrue to them in their running dispute with the union, if the union lost the case, does not rise to the interest necessary to nullify the general policy of the statute and destroy Farowitz' otherwise meritorious cause of action. Moreover, the validity of the union taxes which Carroll, Cutler and Peterson are interested in have been resolved in other suits.
>
> The question of whether Farowitz's suit was encouraged, participated in or financed by employers will be examined, although the conclusion that the employers in issue are not "interested" precludes its relevance as a defense even if established.

The *Farowitz* case is strikingly similar to the case at bar. In each case, the employer involved had no direct legal, financial, or business interest to protect, establish or resolve. In each case, it was the employee whose *real* interest was at stake: In *Farowitz*, the union member's livelihood as a musician was of prime importance; and in the instant case, it is the right of petitioners to be free from harassing, recriminatory and wrongful disciplinary actions. The only interest the employers had in both cases is merely incidental to and derivative from those of the employees.

The reasoning of the *Farowitz* court, then, which gives effect to the intent of the Labor-Management Reporting and Disclosure Act, is compelling here. That the instant case is not of a harassing nature was affirmed by the district court [A26], and any interest which NWA has in this litigation is not of the type which 29 U.S.C. § 411(a)(4), when enacted, was meant to curtail.

NWA has been held to have no legally protectable interest in similar circumstances. This point was clearly made by the court in *Northwest Airlines, Inc.* v. *International A. of M. & A. W.*, 336 F. Supp. 1117 (D.C.Minn. 1972), a case where NWA attempted to enjoin identical disciplinary proceedings

against union members in identical circumstances as those presented here. In that case, the court stated, at page 1119:

> Plaintiff [NWA] has shown no injury to itself and thus has no standing to assert the claims it makes. Any individual [union member] who is disciplined might well, after exhausting his in-union administrative appeals, seek judicial relief, for he if anyone is injured or aggrieved. NWA is not paying the fines levied and at the hearing NWA counsel was quick to admit that he did not appear for or on behalf of any of the charged individual members. NWA sees what it thinks is an evil and an unfortunate situation obtaining and should like to rectify it. There is no showing however that such has affected NWA's work force or the quality thereof or that its interests are in any other way jeopardized or prejudiced, whatever it may feel as to its moral responsibility to those who worked during the strike and crossed the picket lines.

In light of the comments of the Minnesota district court, petitioners submit that NWA is sufficiently *disinterested* so that its open financing is not a bar to this suit by union members to enjoin recriminatory and illegal disciplinary actions.

The Seventh Circuit distinguished the *Farowitz* case in two ways, and petitioners here urge that the case cannot be so distinguished. The court stated that, unlike the employers involved in the *Farowitz* case, NWA stands to gain when it enters into an agreement which includes provisions beneficial to a group of employees represented by the union but who have adhered to a position adverse to that taken by the union. The court noted that the existence of such a situation can create divisions within the union which may weaken the union's future bargaining power and which may strengthen the employer's bargaining power if it can enforce the agreement.

Petitioners' answer to this statement by the Court of Appeals is that it is unrealistic. A union's representational strength depends upon the fair treatment which it accords its members within the confines of the law; this strength has already been

diminished by the union's unfair and illegal action in prosecuting individual union members despite the no-reprisal agreement and the no-strike contract. The solidarity and moral fiber of the union will be strengthened by a decision which holds the union and its hierarchy to its lawful obligations. A government of laws has never been considered as divisive as one of men.

The Court of Appeals also stated that in light of NWA's prior litigation on its own behalf, it was obvious that NWA, itself, had an interest which was not merely an assertion of a moral responsibility and that this, too, was a factor which distinguished the instant case from the *Farowitz* case. However, the employers involved in the *Farowitz* case were also involved in litigation of their own with the same defendant and concerning the same issue. Yet, the *Farowitz* court had little trouble in finding that the employers were not interested in the sense intended by § 411(a)(4).

Most importantly, the real, concrete interest involved in this case involves solely the employees who have been summoned to trial. Whatever incidental benefit may be derived by the union or the employer cannot rise to the legal "interest" necessary to nullify the protection afforded by the fair trial provision of 29 U.S.C. § 411 (a)(5)(c).

CONCLUSION.

Because of the confusion existing in the federal judiciary as to the appropriate relief to be granted to a union member in enforcing a no-reprisal agreement, in enforcing an SBA arbitration award, and as to the interpretation of the "interested employer" proviso of the Labor-Management Reporting and Disclosure Act, all of which are important and recurrent questions of federal labor law, petitioners respectfully request of this Court that a writ of certiorari be issued to the Court of Appeals for the Seventh Circuit and that the decision of that court be reviewed herein.

Respectfully submitted,

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APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

September Term, 1973—January Session, 1974

No. 73-1166

R. J. ADAMSZEWSKI, F. BECKER, P. BORN, C. BRAMMEL, RAY BROO, GERALD O. CROCETTI, FAY FLAKUS, PAUL GARZA, CECIL H. LEGATE, STEVE MANKO, ALBERT T. MARINO, WILLIAM MCCLARY, GREGORY A. PANKOW, M. PELOSE, RICHARD PLETT, R. RUSSELL, ARDITH A. SMITH, HERBERT W. SUNBERG, and all other Northwest Airline, Inc. employees and all other persons who have been notified to appear for a certain "trial" on January 31, 1972 at 50 West Oakton Street, Des Plaines, Illinois,

Plaintiffs-Appellants,

vs.

LOCAL LODGE 1487, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, THOMAS PAUL, WILLIAM AUSTIN, KEN THIEDE, and MICHAEL J. PEAT,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 72 C 188

Philip W. Tone,
Judge.

June 5, 1974

Before SWYGERT, *Chief Judge*, PELL, *Circuit Judge*, and ESCHBACH, *District Judge*.*

ESCHBACH, *District Judge*. This cause is again before the court on plaintiffs-appellants' petition for rehearing. The petition will be denied.

On April 12, 1974, this court affirmed the order of the district court entered on December 14, 1972, dismissing plaintiffs-appellants' action without prejudice. The decision affirming the district court was entered after both sides were given ample opportunity to brief and orally argue the merits of their contentions. In their petition for rehearing, plaintiffs-appellants essentially seek to reargue points which have already been decided adversely to them. Once again we find no merit in plaintiffs-appellants' contentions.

One point raised by the petition for rehearing merits some discussion. Plaintiffs-appellants argue that this court based its decision in part on a misunderstanding of § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185. They argue that any person subject to the Railway Labor Act, 45 U.S.C. § 151 et seq., is exempted from § 301 coverage. However, the nonexistence of a remedy under § 301 does not in any way alter our earlier decision. In our opinion, we stated that:

> *Arguably*, the appellants could have maintained an action under § 301. But, *we need not decide that point* since another ground exists for dismissing this action under any theory based on the no-strike or no reprisal agreement. (Emphasis added.)

The other ground upon which the decision was based was that plaintiffs-appellants were not entitled to injunctive relief. Clearly, any arguendo reference to the possibility of a § 301 action in our earlier decision has no bearing on the decision that the suit was not a proper one for injunctive relief. The district court

* District Judge Jesse E. Eschbach of the Northern District of Indiana is sitting by designation.

properly dismissed the entire action. Thus, even if plaintiffs-appellants cannot maintain a § 301 action, that ground alone does not entitle them to either a rehearing or a reversal of the district court.

Additionally, it must again be pointed out that the action of the district court in dismissing the action without prejudice does not bar plaintiffs-appellants from seeking future relief. In our earlier opinion, we stated that plaintiffs-appellants were not precluded from bringing an action pursuant to 29 U.S.C. § 412 provided that it was not financed by NWA. Plaintiffs-appellants may also bring a suit financed by NWA if properly brought and if the proviso of 29 U.S.C. § 411(a)(4) is not violated. Nor did the dismissal by the district court bar any other relief under the Railway Labor Act, including any possible suit for breach of the duty of fair representation. In summary, if plaintiffs-appellants are disciplined, they are free to seek damages under any theory of action which they decided is applicable as long as the proviso of § 411(a)(4) is not violated.

Accordingly, the petition for rehearing is denied.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

September Term, 1973—January Session, 1974

No. 73-1166

R. J. ADAMSZEWSKI, F. BECKER, P. BORN, C. BRAMMEL, RAY BROO, GERALD O. CROCETTI, FAY FLAKUS, PAUL GARZA, CECIL H. LEGATE, STEVE MANKO, ALBERT T. MARINO, WILLIAM MCCLARY, GREGORY A. PANKOW, M. PELOSE, RICHARD PLETT, R. RUSSELL, ARDITH A. SMITH, HERBERT W. SUNBERG, and all other Northwest Airline, Inc. employees and all other persons who have been notified to appear for a certain "trial" on January 31, 1972 at 50 West Oakton Street, Des Plaines, Illinois,

Plaintiffs-Appellants,

vs.

LOCAL LODGE 1487, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, THOMAS PAUL, WILLIAM AUSTIN, KEN THIEDE, and MICHAEL J. PEAT,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 72 C 188

Philip W. Tone, *Judge.*

Argued January 18, 1974—Decided April 12, 1974

Before SWYGERT, *Chief Judge*, PELL, *Circuit Judge*, and ESCHBACH, *District Judge*.*

ESCHBACH, *District Judge*. Plaintiffs-appellants have taken this appeal from a decision of the district court denying their motion for summary judgment and dismissing their action without prejudice. Plaintiffs-appellants argue that the district court was in error both in denying their motion and in dismissing the action. We agree with the district court and therefore will affirm.

The facts, as set forth in the district court's memorandum of decision, are not substantially disputed. Plaintiffs-appellants are employees of Northwest Airlines, Inc. (NWA) and members of the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM). Plaintiffs-appellants brought this action against IAM's Local Lodge 1487 and its officers seeking to enjoin union disciplinary proceedings which had been instituted against plaintiffs-appellants for crossing the picket lines of a sister union. Plaintiffs-appellants seek to represent themselves and a class consisting of all employees against whom such proceedings have been instituted. A preliminary injunction was issued to delay the disciplinary proceedings during the pendency of this action.

On July 8, 1970, the Brotherhood of Railway and Airline Clerks (BRAC) struck against NWA and established picket lines. Although IAM's collective bargaining agreement with NWA contained a no-strike provision,[1] IAM nevertheless in-

* District Judge Jesse E. Eschbach of the Northern District of Indiana is sitting by designation.

1. "It is understood and agreed that the Company will not lock out any employee covered hereby and the Union will not authorize or take part in any strike or picketing of Company premises during the life of this Agreement until the procedures for settling disputes as provided herein and as provided by the Railway Labor Act have been exhausted."

ARTICLE XXV, Paragraph (k), Collective Bargaining Agreement between NWA and IAM of January 1, 1969.

structed its members, who were employees of NWA, not to cross BRAC's picket line. However, NWA ordered its employees back to work and plaintiffs-appellants complied with NWA's order, crossed the BRAC picket line and returned to work. The question of whether, in view of the no-strike provision, IAM had the right to instruct its members not to cross the BRAC picket line was referred to a System Board of Adjustment (SBA) by the Court of Appeals for the Eighth Circuit. *Northwest Airlines, Inc.* v. *Int'l Ass'n of Machinists and Aerospace Workers, AFL-CIO*, 442 F.2d 244 (8th Cir. 1970). The Board decided on December 14, 1970, that:

> IAM, in light of the no-strike provisions of the bargaining agreement does not retain the right to instruct its members to honor the picket lines of a sister Union.

On December 8, 1970, shortly before the SBA handed down its decision, IAM and NWA negotiated a back to work agreement providing in paragraph VI that:

> There will be no reprisals, recriminations, disciplinary actions, grievances or reprimands by either party against any employee represented by IAM because of any action or non-action during or arising from the strike.

Subsequently, despite the agreement of December 8, 1970, the union local notified plaintiffs-appellants that charges had been preferred against them for conduct unbecoming a union member, consisting of crossing the BRAC picket line, and ordered them to appear for trial on those charges. Plaintiffs-appellants thereupon filed this action to enjoin the disciplinary proceedings, relying upon the no-strike provision of the NWA-IAM collective bargaining agreement, the no-reprisal provision of the back to work agreement, and the decision of the System Board of Adjustment.

On January 26, 1972, an order was issued compelling the union and its officers to hold the disciplinary proceedings in abeyance until the final disposition of all issues in this case.

The parties subsequently filed reciprocal motions for summary judgment. On December 14, 1972, the district court entered an order and memorandum of decision denying plaintiffs-appellants' motion for summary judgment and treated the defendants-appellees' motion for summary judgment as a motion to dismiss raising matters in abatement and dismissed the entire action without prejudice to plaintiffs-appellants' right to commence further actions. The basis for the district court's decision was that plaintiffs-appellants had violated the second proviso of Title 29, U.S.C. § 411(a) (4). The parties had previously signed and filed a stipulation with the court to the effect that NWA was financing plaintiffs-appellants' suit. The district court found that NWA was an interested employer within the meaning of the proviso and that the suit could not be maintained by plaintiffs-appellants while financed by NWA.

I.

The first question presented is whether the district court erred in its construction of the second proviso of Title 29, U.S.C. § 411(a)(4), in determining that NWA was an "interested employer." Appellant contends that one of the grounds for relief stated in the complaint is that the guarantee set forth in Title 29, U.S.C. § 411(a)(5), which provides that no union member can be disciplined unless he has been served with written specific charges and given a full hearing after a reasonable time within which to prepare his defense,[2] was violated by appellees.

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2. SAFEGUARDS AGAINST IMPROPER DISCIPLINARY ACTION—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect. 29 U.S.C. § 411(a)(5).

A.

Title 29, U.S.C. § 412, confers original jurisdiction on the district courts to hear controversies involving the guarantee set forth in section 411(a)(5). In order to safeguard the guarantees set out in 29 U.S.C. § 411-415, § 411(a)(4) prohibits labor unions from limiting the rights of their members to institute actions against the unions or their officers.[3] However, the right to bring a suit against a union and its officers is qualified by two provisos. The first states:

> *Provided*, That any such member may be required to exhaust reasonable hearing procedures . . . within such organization before instituting legal or administrtive proceedings against such organizations or any officer thereof[.]

The district court held that plaintiffs-appellants were not required to exhaust union procedures. The court reasoned that such actions would be futile since no internal union remedies existed which were capable of giving plaintiffs-appellants the relief they were seeking since they sought not merely to prevent possible union punishment but sought to prevent the disciplinary hearings themselves. The appellees have not cross-appealed from the decision of the district court, and therefore the propriety of the decision is not properly before us on review.

B.

The principal issue in this appeal is whether NWA is an "interested employer" within the meaning of the second proviso of 29 U.S.C. § 411(a)(4). The second proviso states:

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3. U.S.C. § 411(a)(4) without its two provisos provides that:

PROTECTION TO THE RIGHT TO SUE—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator. . . .

> *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourage or participate in, except as a party, any such action, proceeding, appearance or petition.

Appellants argue that although NWA is financing the suit, it gains no legal, financial or business advantage from the suit but is merely asserting a moral responsibility toward its employees who lawfully crossed the BRAC picket line. Appellees in reply argue that NWA is motivated by a desire to lessen the representational strength of IAM as the collective bargaining representative of the NWA employees which IAM represents. Thus, we must determine what is meant by the term "interested employer" and then decide whether NWA is an "interested employer."

The second proviso of § 411(a)(4) has been construed in *Farowitz* v. *Associated Musicians of Greater New York,* 241 F. Supp. 895 (S.D.N.Y. 1965). That court determined that the proviso must be strictly construed and that the language must be given a construction as consistent as possible with the policy of the statute to guarantee the right of union members to sue the union. The court decided that the employers, despite the fact that they had financed several suits against the union, were not "interested" within the meaning of the statute. The court stated that what was at stake was the plaintiff's livelihood as a musician and that the incidental propaganda benefit which would accrue to the employers did not rise to the level of an interest necessary to fall within the proviso.

The court focused on the statement of Representative Griffin regarding the purpose of the second proviso of § 411(a)(4):

> The last proviso in Section 101(a)(4) was added to make sure that the interested employers do not take advantage of rights accorded union members by encouraging or financing harassing suits or proceedings brought by union members against their unions. The purpose of the proviso should be kept in mind and it should not be so nar-

> rowly construed as to impose unnecessary or unintended restrictions upon employers in relationship with their employees.

Cong. Rec. App. A 7915 (Sept. 10, 1959). It is a fair reading of the *Farowitz* opinion to say that the court narrowly construed the word "interested" and decided that in the context of the facts before it the employer was not "interested" and the suit was not a harassing suit.

The instant action is distinguishable from *Farowitz* as the district court correctly noted. Farowitz had been expelled from the union for publishing a bulletin contending that taxes imposed by the union on members were illegal. The dispute was clearly one solely between the union and its ex-member. Farowitz merely sought reinstatement in the union and damages. The question of the legality of the taxes imposed by the union was the subject of other suits in which the employers in question were parties. The instant action, although principally a dispute between the union and some of its members, has far greater implications. It involves not only questions relating to the no-strike provision of the collective bargaining agreement and an interpretation of that agreement by the System Adjustment Board, but also involves the back to work agreement between NWA and IAM to which the appellants claim to be beneficaries. The instant action is not as limited in scope as *Farowitz* which involved one union member's right to express his views of union policies. The instant action, arising out of a prior dispute between NWA, BRAC and IAM necessarily has greater implications in the area of labor-management relations in the airline industry. Certainly, if the union can enter a back to work agreement with the employer after a walkout and then proceed either to interpret its provisions as the union wishes or openly flaunt its provisions, the employer must necessarily be concerned. The entire posture of present and future labor-management relations must be affected. Similarly, the employer stands to gain when it enters an agreement with pro-

visions beneficial to a group of employees represented by the union but who have adhered to a position adverse to that taken by the union. A potential for creating divisions within the union, which may weaken the union's future bargaining power, can be gained by the employer, providing it can enforce the agreement. Obviously, all these considerations put the instant action in an entirely different posture than the *Farowitz* facts.[4]

Certainly, the *Farowitz* court was correct when it decided that the second proviso of § 411(a)(4) is meant to prevent harassing suits, but that is not its only purpose. In the original bill of rights (of labor organization members) amendment of Senator McClellan, § 101(a)(4) [codified after enactment as 29 U.S.C. § 411(a)(4)] did not contain the second proviso. 105 Congressional Record 6475 (1959). The second proviso was added in the so-called Kuchel amendment and did not contain the word "interested." The Kuchel amendment provided:

> That no employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

105 Congressional Record 6693 (1959). The word "interested" was later added during the course of debate on the amend-

4. In *Farowitz* the employers were involved as parties in several suits attacking the union tax. NWA has brought suit as party plaintiff seeking to enjoin the union from instructing its members to honor the picket lines and was unsuccessful. *See, Northwest Airlines, Inc.* v. *Int'l Ass'n of Machinists and Aerospace Workers,* 323 F.Supp. 107 (D. Minn. 1970), *on appeal,* 440 F.2d 244 (8th Cir. 1970), *on remand,* 332 F.Supp. 1330 (D. Minn. 1971). In *Northwest Airlines, Inc.* v. *Int'l Ass'n of Machinists and Aerospace Workers,* 336 F.Supp. 1117 (D. Minn. 1972), the court held that NWA did not have standing to seek redress for union members who were disciplined since NWA could not show that it was injured or aggrieved.

NWA is now engaged in financing suits brought by union members against the Union. In light of the prior litgation on its own behalf which was unsuccessful, it would certainly indicate that NWA itself has indicated an interest in the litgation which is not merely an assertion of a "moral responsibility."

These facts also disinguish the instant action from *Farowitz.*

ment and after the Senate had expressly stated that it was creating "legislative history" in regard to the reason for its insertion. Senator Goldwater had sought to amend the Kuchel amendment by adding at the end:

> unless such employer has no dispute, controversy, contract, connection or relationship of any kind in any area of activity, with the labor organization against which such action or proceeding has been or is being brought by such member.

105 Congressional Record 6724 (1959). Senator Goldwater was concerned with the fact that under the Kuchel proviso, a neighbor of a union member, who happened to be a businessman, could not finance the union member's suit because such neighbor was "an employer." 105 Congressional Record 6724 (1959). Senator Mundt later added that even a bank was "an employer" so that it could be questioned whether even a bank could lend a union member money to finance a suit without violating the proviso. 105 Congressional Record 6725 (1959). Nevertheless, the sentiment was that Senator Goldwater's proposed amendment went too far. Therefore, Senator Javits suggested that Senator Goldwater's proposed amendment would not be necessary and the problem which he sought to prevent could be avoided by insertion of the word "interested" to make the Kuchel amendment read "no interested employer . . ." 105 Congressional Record 6725 (1959). Senator Goldwater asked Senator Javits to explain what he meant by "interested." In the explanation of Senator Javits, it was brought out that the word "interested" was inserted to allow a friend or bank to finance a suit but not an employer who may gain an advantage over the union from such suit. Otherwise, an employer with such an interest could bring undue pressure on the union. 105 Congressional Record 6725 (1959).[5] Subsequently, the Senate

5. Mr. Goldwater. I understand what it means, but we want to make a legislative history. I want the proponents of this interesting word "interested" to explain it.

I yield to the Senator from New York.

(Continued on Next Page)

voted to accept the proviso amended to read "any interested employer, . . ." 105 Congressional Record 6727 (1959), and the bill eventually became law in this form. Senator Goldwater in his remarks on the proviso stated:

> . . . the Senate modified the limitation to apply to interested employers only, the legislative history making it clear that employers such as those in the foregoing examples [i.e., banks, friends, or relatives who might also be an employer] were not included in the limitation which would apply only to employers who had a concrete interest in the litigation because of some relationship in the union other than the mere connection with the union member bringing the suit.

From this background of the relevant legislative history, it is clear that Congress meant to prohibit an employer from financing a suit by a union member when the employer had a concrete interest in the litigation due to its relationship with the union. Therefore, the district court did not err when it decided that interested meant "having an interest in something; concerned." American College Dictionary 635 (1970). More

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Mr. Javits. I have in mind the fact that an employer who has an interest in the litigation ought not to bring pressure upon a union. In the eventuation of a relationship of the litigant to the union, an interested employer should not be a party to finance the suit.

We ourselves are so against antibarratry statutes that I do not want to be a party to a law which would prevent a union member from finding a friend, who happens to be an employer of people in a totally unrelated business, a bank or anything else, to loan him the money. We should not have a law to make it impossible to borrow from a friend to start a suit.

Mr. Allott. May I ask a question, for the legislative history?

Mr. Goldwater. I yield.

Mr. Allott. Including the word as the Senator has used it, in the opinion of the Senator would the language include "any" employer? Let us assume that the employer is in the general grocery business. Would the word "interested" include any other employer?

Mr. Javits. I think it probably would if the litigation involved the union in the whole line of business, because the words of art are "employer or employer association."

Again we have a balance of convenience. Neither side ought to trim this, and that is why I have given the legislative history.

precisely, interested can be defined as: "having a share or concern in some project; liable to be affected or prejudiced; also having self-interest. . . ." Webster's New Collegiate Dictionary 439 (1960). Having a concrete interest in the litigation means having a share or concern in the litigation, liable to be affected by it. We decide that this is the meaning intended by Congress when it added the word "interested" to the proviso.

Whether an employer is interested in the litigation, that is, whether an employer is concerned with it or is liable to be affected by it or has some self-interest in it, must necessarily be determined in the factual context which gave rise to the litigation. When viewed against the backdrop out of which the dispute between the appellants and their union developed, there is no doubt but that NWA has a concrete interest in the litigation arising out of their relationship with IAM. NWA has an interest in seeing that agreements which they enter into with the union are carried out in good faith by the union. Their future bargaining position will be influenced by a determination of whether the union has violated the no-reprisal agreement or not. Bargaining strategy will be influenced by a knowledge of whether or not the union can be trusted to adhere to its agreements.

In addition, the employer stands to gain from any divisiveness within the union which could weaken it at the bargaining table where it would be unable to present a solid front against NWA. Any weakening of the representational strength of IAM as the exclusive bargaining representative of NWA's employees in the crafts and classes of service would redound to NWA's benefit at the bargaining table and in its over-all relationship with labor. Appellants argue that no legal, financial or business advantage is gained by NWA from this suit. It is clear that NWA has a practical business interest in the suit and could gain an improvement in its collective bargaining position. The district court committed no error in deciding that the second proviso of § 411(a)

(4) had not been complied with and correctly decided that a suit could not be maintained pursuant to § 412.[6]

II.

Applicants contend that several alternate grounds exist which entitle them to relief which are properly pleaded and are not precluded by 29 U.S.C. § 411(a) (4). They argue that they not only relied on the protection of the Labor Management Reporting and Disclosure Act's fair trial provision but also sought relief under the no-strike provision of the NWA-IAM collective bargaining agreement, the no-reprisal paragraph of the back to work agreement and the decision of the System Board of Adjustment. It is argued that the district court erred in dismissing these alternate causes of action.

A.

We agree with appellants initial contention that the proviso of 29 U.S.C. § 411(a) (4) does not preclude relief sought pursuant to 45 U.S.C. § 151—188 of the Railway Labor Act, if otherwise properly brought. Title 29 U.S.C. § 412 grants original jurisdiction in the district courts for any violations of rights granted in 29 U.S.C. §§ 411-15. Section 413 is a saving provision which states that nothing contained in sections 411—15 shall limit the rights and remedies of any union member existing under any other federal law.[7] This section preserves pre-existing federal remedies. *Tirino* v. *Local 164, Bartenders and Hotel*

6. Plaintiffs-appellants argue that the district court erred by failing to order that NWA be joined as a party under Rule 19(a), Fed. R. Civ. P. The district court was correct in its decision. Rule 19(a) clearly inapplicable. NWA is not needed for just adjudication and has freely chosen not to participate as a party but merely to finance the action. The court need not disturb NWA's choice.

7. 29 U.S.C. § 413 provides: "Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization."

and Restaurant Employees Union, 282 F.Supp. 809, 813 (E.D. N.Y. 1968). In addition, 29 U.S.C. § 523(b) provides that nothing in sections 401—531 of Title 29 shall supersede or impair the provisions of the Railway Labor Act or the National Labor Relations Act or the rights conferred thereby[8] Appellants are not therefore precluded by 29 U.S.C. §411 from pursuing any other remedies properly brought.

Appellants argue that the System Board of Adjustment's award is enforceable in federal court and that the award provides the basis for the relief sought. It is well established that an award of the SBA is entitled to enforcement in the federal courts. *Int'l Ass'n of Machinists* v. *Central Airlines, Inc.*, 372 U.S. 682, 83 S.Ct. 956, *rehearing denied*, 373 U.S. 947, 83 S.Ct. 1533 (1963); *Buzzard* v. *Local Lodge 1040 Int'l Ass'n of Machinists & Aerospace Workers*, 480 F.2d 35 (9th Cir. 1973). In such a case jurisdiction would exist pursuant to 28 U.S.C. §1331 or §1337 provided that the complaint presented a substantial claim arising under the Railway Labor Act, 45 U.S.C. §151-188. However, the SBA award will not support the relief requested by appellants. The SBA decision expressly stated that the award was not based on any consideration of "matters of discipline . . . of individuals for refusing to cross picket lines of sister unions." Opinion of NWA/IAMAW System Board of Adjustment 5 (1970). Rather, the focus of the SBA was on the no-strike clause and its effect on union conduct. *Id.* at 2, 4, 5. The issue presented to the SBA by the Court of Appeals for the Eighth Circuit was:

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8. 29 U.S.C. § 523(b) provides: "Nothing contained in this chapter [§§ 401-531] and section 186 (a-c) of this title shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended, or any of the obligations, rights, benefits, privileges, or immunities of any carrier, employee, organization, representative, or person subject thereto; nor shall anything contained in this chapter be construed to confer any rights, privileges, immunities, or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.

> [W]hether IAM, in the light of the no-strike provisions of the bargaining agreement, retains the right to instruct its members to honor the picket lines of a sister union.

Northwest Airlines, Inc. v. *Int'l Ass'n of Machinists and Aerospace Workers,* 442 F.2d 244, 246 (8th Cir. 1970). The decision reached by the SBA was that IAM did not retain the right to instruct its members to honor the picket lines of a sister union. Opinion of NWA/IAMAW System Board of Adjustment, *supra* at 11. Therefore, the SBA award is limited in scope and it does not give appellants a cause of action to enjoin the disciplinary hearings. Since the injunctive relief sought could not be based on the SBA award, the district court committed no error in dismissing that claim. *Accord, Buzzard* v. *Local Lodge 1040 Int'l Ass'n of Machinists and Aerospace Workers,* supra at 40.[9]

B.

Appellants assert that the district court had jurisdiction to grant the injunctive relief requested based on the alleged breach of the no-strike provision of the collective bargaining agreement and the no-reprisal provision of the back to work agreement guidelines. Under §301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185, an employee may sue his employer for breach of a promise contained in the collective bargaining agreement that was intended to confer a benefit upon the individual. *Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America* v. *Lockridge,* 403 U.S. 274, 298-99, 91 S.Ct. 1909, 1924, *rehearing denied,* 404 U.S. 874, 92 S.Ct. 24 (1971); *Smith* v. *Evening News Ass'n* 371 U.S. 195, 83 S.Ct. 267 (1962). Section 301 also allows a suit by a union member seeking redress from union interference with rights conferred on employees by employer promises in the collective

9. Apparently *contra* is *Verville* v. *IAMAW* (unreported decision of D.C.E.D. Mich., April 25, 1972). However, the court did not discuss the scope of the question presented to the SBA nor express limitation in the Board's award.

bargaining agreement if the union action constitutes a breach of the duty of fair representation. *Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America* v. *Lockridge, supra* at 299, 91 S.Ct. at 1924; *Humphrey* v. *Moore,* 375 U.S. 335, 84 S.Ct. 363, *rehearing denied* 376 U.S. 935, 84 S.Ct. 697 (1964). *See also, Ford Motor Co.* v. *Huffman,* 345 U.S. 330, 73 S.Ct. 681 (1953). The no-reprisal clause in the back to work agreement is a "contract" cognizable under §301(a). *Retail Clerks Int'l Ass'n* v. *Lion Dry Goods,* 369 U.S. 17 23-30, 82 S.Ct. 541, 545-49 (1962). It has recently been held that §301 will support a suit by union members against the IAM seeking redress from a refusal of the union to honor the rights conferred on employees by union promises contained in the no-reprisal agreement. *Buzzard* v. *Local Lodge 1040 Int'l Ass'n of Machinists and Aerospace Workers, supra at* 40, 41. Arguably, the appellants could have maintained an action under §301. But we need not decide that point since another ground exists for dismissing this action under any theory based on the no-strike or no-reprisal agreement.

The only relief sought by appellants was an injunction of the disciplinary proceedings. They did not seek any money damages under any of the alternate theories pleaded. It is well established that equitable relief will not be granted when a remedy exists at law which would completely compensate a party for any damages which he may have suffered. *See, Beacon Theatres, Inc.* v. *Westover,* 359 U.S. 500, 79 S.Ct. 948, 954 (1959). To be entitled to injunctive relief a party must show that he has no adequate remedy at law and will suffer irreparable harm unless the injunction issues. Appellants stated in their complaint that there was no adequate legal remedy and that they would suffer irreparable harm if forced to submit to disciplinary proceedings in that their standing as members of IAM and with NWA would be jeopardized. However, such potential harm is completely speculative at this time. None of the appellants has had to undergo disciplinary hearings in this matter. None has been

fined, suspended or in any way sanctioned by the union. It is anomalous for appellants to argue that their employment with NWA may be jeopardized when, in fact, NWA is financing this suit. Similarly, it is difficult to see how appellants' position within the union will be jeopardized to any greater extent by requiring them to attend the disciplinary proceedings than it would be by issuing an injunction in their behalf against the holding of such proceedings. This is not to be interpreted that this court sanctions the union's conduct toward these employees, which conduct is questionable at best. The attempt of the union to discipline its members in the face of the no-strike provision, the SBA award and the no-reprisal agreement presents a serious question of the exposure of the union to damages if it should elect to discipline appellants. The *Buzzard* court has already determined that a remedy does exist for disciplined union members for violation of the no-reprisal agreement. *Buzzard* v. *Local Lodge 1040 Int'l Ass'n of Machinists and Aerospace Workers, supra.* In addition, the decision of the Supreme Court of the United States in *Vaca* v. *Sipes,* 386 U.S. 171, 87 S.Ct. 903 (1967) should make it clear to the union that remedies exist for arbitrary conduct toward its members and for breaches of the duty to represent all members without hostility or discrimination toward any. But, in the absence of a showing of irreparable harm or the inadequacy of legal remedies, no injunction can issue.

Appellants have also argued that it is the holding of the disciplinary proceedings themselves in violation of the no-reprisal agreement which wrongs them. Yet, appellants are unable to show that being subjected to disciplinary procedings will cause them irreparable harm. If it is decided that the union's action was a violation of the collective bargaining agreement or the no-reprisal agreement, any harm suffered by appellants could be adequately compensated by money damages. *Cf., Sanders* v. *Air Line Pilots Ass'n Int'l,* 473 F.2d 244 (2nd Cir. 1972).

Appellants admit at page four of their reply brief that fellow union members have a right to complain against them. When a complaint is filed, Article L, Section 7, of the Constitution of the IAMAW provides that the president of the local must proceed to bring the accused member to trial.[10] Appellants are aware of this provision and do not deny that as union members they are bound by it. If the charges brought by members against fellow members are found sufficient by the trial committee, Article L requires a trial. Yet, it is not usually the holding of this trial which is thought of as "disciplinary" but the sanctions imposed which constitute the discipline. The no-reprisal agreement prohibits the union from taking "disciplinary action" because of a member's conduct during the BRAC strike. It is difficult to see, and appellants have not shown, how holding the disciplinary hearings per se, as distinguished from any punishment which may be imposed, will cause appellants irreparable harm. Therefore, even if a cause of action can be maintained based on the no-reprisal agreement pursuant to 29 U.S.C. §185, since only equitable relief was sought and since no basis for that relief was shown, the district court was not in error by dismissing the entire action.

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10. Section 7 provides in relevant part:

. . .

It is the duty of any member who has information as to conduct of a member covered by Sec. 3 of this Art. to immediately prefer charges in writing against such member. . . .

. . .

In the event that any L.L., or the members thereof fail to proceed as prescribed herein, then any officer or representative, or member may file written charges against such member or members with the I.P. Upon the receipt of such charges, the I.P. shall . . . [command] said L.L. to proceed to place the accused on trial under the provisions of this Art.

If said L.L. fails or refuses for 15 days thereafter, to proceed as ordered by the I.P., then the I.P. shall notify the accused and the L.L. of which the accused is a member, of the time and place, when and where a special committee will meet for the purpose of hearing evidence and trying the accused. . . .

Since the district court dismissed without prejudice, nothing in the decision of that court and nothing in the opinion in this court precludes appellants from bringing an action pursuant to 29 U.S.C. §412, provided it is not financed by NWA. Appellants also are not precluded from seeking any relief available under 29 U.S.C. §185.

The decision of the district court in denying plaintiffs-appellants' motion for summary judgment and in dismissing their action is affirmed.

JUDGEMENT AFFIRMED.

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

R. J. ADAMSZEWSKI, F. BECKER, P. BORN, C. BRAMMEL, RAY BROO, GERALD O. CROCETTI, FAY FLAKUS, PAUL GARZA, CECIL H. LEGATE, STEVE MANKO, ALBERT T. MARINO, WILLIAM MCCLARY, GREGORY A. PANKOW, M. PELOSE, RICHARD PLETT, R. RUSSELL, ARDITH A. SMITH, HERBERT W. SUNBERG, and all other Northwest Airline, Inc. employees and all other persons who have been notified to appear for a certain "trial" on January 31, 1972 at 50 West Oakton Street, Des Plaines, Illinois,

Plaintiffs,

vs.

LOCAL LODGE 1487, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, THOMAS PAUL, WILLIAM AUSTIN, KEN THIEDE, and MICHEAL J. PEAT,

Defendants.

No. 72 C 188

MEMORANDUM OF DECISION

PHILIP W. TONE, *District Judge.*

Plaintiffs, who are employees of Northwest Airlines, Inc. and members of International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), sue that union's Local Lodge

1487 and its officers to enjoin union disciplinary proceedings instituted against plaintiffs for crossing the picket lines of a sister union. They seek to represent themselves and a class consisting of all employees against whom such proceedings have been instituted. Shortly after the action was commenced, Judge Decker entered a preliminary injunction against defendants. The case now comes on for decision of cross motions for summary judgment.

On July 8, 1970 the Brotherhood of Railway and Airlines Clerks (BRAC) struck against Northwest Airlines and established picket lines. IAM instructed its members who were employees of Northwest Airlines not to cross BRAC's picket lines. Northwest ordered the IAM employees back to work, and plaintiffs complied with that order, crossing BRAC picket lines.

IAM's contract with Northwest Airlines contained a no-strike provision. The question of whether, in view of that provision, IAM had the right to instruct its members not to cross the BRAC picket lines was referred to a System Board of Adjustment by the Court of Appeals for the Eighth Circuit. *Northwest Airlines, Inc.* v. *International Association of Machinists & A.W.*, 442 F. 2d 244 (8th Cir. 1970). The Board held on December 14, 1970, that "IAM, in the light of the no-strike provisions of the bargaining agreement does not retain the right to instruct its members to honor the picket lines of a sister union."

Shortly before the Board handed down its decision, IAM and Northwest Airlines negotiated a back-to-work agreement providing

> "VI. There will be no reprisals, recriminations, disciplinary actions, grievances or reprimands by either party against any employee represented by IAM because of any action or nonaction during or arising from the strike [by BRAC]."

Subsequently the defendant local notified plaintiffs that charges had been preferred against them for conduct unbecoming a union members, consisting of crossing the BRAC picket

lines, and ordered them to appear for trial of those charges. Plaintiffs thereupon filed this action to enjoin the disciplinary proceedings, relying upon the no-strike provision of the Northwest Airlines-IAM contract, the no-reprisal provision of the back-to-work agreement, and the decision of the System Board of Adjustment.

In two unreported decisions in similar actions brought on the same facts against another IAM local in the Western District of Washington, injunctions were issued against the union. *Buzzard* v. *Local Lodge 1040*, and *Allen* v. *International Association of Machinists & A.W.*, (W.D. Wash. 1971). Those cases are pending on appeal in the Court of Appeals for the Ninth Circuit.

In the action in the District of Minnesota which had earlier led to the reference to the Board by the Court of Appeals for the Eighth Circuit, Northwest Airlines sought, after the Board's decision, to enjoin IAM from conducting disciplinary proceeding of the kind involved here. *Northwest Airlines, Inc.* v. *International Association of Machinists & A.W.*, 336 F. Supp. 1117 (D. Minn. 1972). The court denied that relief on several grounds, one of which was that Northwest Airlines had no standing to redress a wrong to its employees.

We are met at the threshold with two defenses which, it is contended, prevent us from reaching the merits, (1) that plaintiffs have not exhausted their remedies within the union, as contemplated by the first proviso of 29 U.S.C. § 411(a)(4); and (2) that Northwest Airlines is financing the action and therefore it may not be maintained in view of the final proviso of 29 U.S.C. § 411(a)(4), which reads as follows:

> "*And provided further*, that no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

(1)

The internal union remedy exhaustion proviso of 29 U. S. C. § 411(a)(4) was construed in *NLRB* v. *International Union of Marine & Shipbuilding Workers*, 391 U. S. 418, 426 (1968) to be "a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief within the union." The determination of whether to require exhaustion of the intra-union procedures is thus left to the sound discretion of the court exercised in the light of the facts and circumstances of the particular case. (391 U. S. at 428.)

Exhaustion of internal union remedies need not be followed when it would be futile to do so. *Farowitz* v. *Associated Musicians of Greater New York*, 330 F. 2d 999 (2d Cir. 1964). There is good reason to believe that this is such a case because of the sanctions already imposed upon plaintiffs' fellow union members who crossed BRAC picket lines during the strike. (See *Northwest Airlines, Inc.* v. *International Association of Machinists & A. W.*, 336 F. Supp. at 1118.)

Moreover, there are no internal union remedies that are capable of giving plaintiffs the relief to which they claim to be entitled. Relying upon the provision in the back-to-work agreement which states that "There will be no . . . disciplinary actions," plaintiffs seek to prevent not merely possible union punishment but the conduct of disciplinary actions. If plaintiffs are required to submit to disciplinary proceedings, they would lose the benefit of this provision whatever the outcome. Accordingly, plaintiffs are not required to exhaust internal union procedures.

(2)

The second threshold defense is based upon the fact, which plaintiffs have stipulated, that Northwest Airlines is financing this litigation. If it is an "interested employer" it has violated

the final proviso of Section 411(a)(4) quoted above. No definition of "interested" appears in the statute. One district court has dealt with the question of whether an employer was "interested" and reached a negative result. *Farowitz* v. *Associated Musicians of Greater New York*, 241 F. Supp. 895, 908 (S. D. N. Y. 1965). The facts in that case would permit us to distinguish it, but it is fair to say that the court there construed the word "interested" narrowly. Applying that word in the case at bar and reading the word in the context of the proviso and the paragraph in which the proviso appears, and of the Act itself, I do not believe Congress intended that the word be given a narrow, technical meaning. Congressman Griffin said the purpose of the proviso was "to make sure that the interested employers do not take advantage of rights accorded union members by encouraging or financing harassing suits or proceedings brought by union members against their unions," Cong. Rec. App. A 7915 (Sept. 10, 1959) (quoted in the *Farowitz* case, *supra*, 241 F. Supp. at 908). While this case cannot fairly be described as a "harassing suit," the quoted language, considered with the proviso itself, indicates that "interested" was not used in the sense of having a legal or property interest but in the popular sense of "having an interest in something; concerned." American College Dictionary, p. 635 (1970). Northwest Airlines is "interested" in that sense, as evidenced by its effort on its own behalf, in *Northwest Airlines, Inc.* v. *International Association of Machinists & A. W., supra*, 336 F. Supp. 1117 (D. Minn. 1972), to enjoin IAM from taking the disciplinary action in issue here.

There remains the question of whether the proviso was intended to bar the employee's suit. If it did not have that effect, it would be merely precatory, for no other sanction is provided in the Act for violation of the proviso. Appearing as it does in the paragraph of the Act guaranteeing the employee's right to sue in any court, it must be construed as a limitation on that right. This conclusion is not affected by the legislative drafts-

man's failure to repeat the proviso in the next section, 29 U. S. C. § 412, on which jurisdiction in this case is based. That section merely confers jurisdiction on the district courts of the United States to redress infringement of the rights guaranteed by Section 411 and the other provisions of the subchapter entitled "Bill of Rights of Members of Labor Organizations" and does not purport to deal with all the conditions under which suit may be brought.

In view of the foregoing, it is unnecessary to reach the class suit question or the other issues raised by the cross motions for summary judgment.

Plaintiffs' motion for summary judgment is denied. Defendants' motion for summary judgment is treated as a motion to dismiss raising matters in abatement, and pursuant to that motion the action is dismissed without prejudice to plaintiffs' right to commence further actions not financed by Northwest Airlines, Inc.

/s/ PHILIP W. TONE,
United States District Judge

Dated: December 14, 1972

UNITED STATES DISTRICT COURT
Eastern District of Michigan
Southern Division

ROBERT F. VERVILLE and JOHN G. DEBRUYN,
Plaintiffs,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, a Labor Organization; DETROIT AIR TRANSPORT LODGE 141, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, a Labor Organization; AL LOUGHLEY; and E. G. MONTIE, Jointly and Severally,
Defendants.

Civil No. 37650

MEMORANDUM AND ORDER

This cause filed pursuant to the Railway Labor Act, 45 U.S.C. § 151 et seq., is before the court on cross-motions for summary judgment and a motion for reconsideration of defendant's initial summary judgment motion which was denied on April 25, 1972. Since that ruling the parties have filed the following Stipulation of Facts:

> 1. Plaintiffs are both employees of Northwest Airlines, Inc. (herein called "NWA") at Metropolitan Airport, Wayne County, Michigan, and are both members of Defendant Detroit Air Transport Lodge 141, International Association of Machinists and Aeorospace Workers (herein called "Lodge 141"), a labor organization representing air carrier employees under the Railway Labor Act, May 20, 1926, c. 347, § 1 et seq., 44 Stat. 577, as amended; 45 USCA § 151 et seq. (herein called "the

Act"), and of its parent, defendant International Association of Machinists and Aerospace Workers (herein called "IAMAW") also a labor organization representing air carrier employees under the Act.

2. During the latter part of the year 1970, the Brotherhood of Railway and Airline Clerks (herein called "BRAC"), engaged in a strike against NWA and in connection therewith established a picket line at NWA facilities at Detroit Metropolitan Airport. At that time, there was in full force and effect between NWA and the defendant Unions a collective bargaining agreement dated January 1, 1969, which provided in Paragraph (K) of Article XXV thereof as follows:

> "It is understood and agreed that the Company will not lock out any employee covered hereby and the Union will not authorize or take part in any strike or picketing of Company premises during the life of this Agreement until the procedures for settling disputes as provided herein and as provided by the Railway Labor Act have been exhausted."

3. Plaintiffs were instructed by Defendant Lodge 141 not to cross the aforesaid BRAC picket lines and not to report to work during the existence of said picket lines. Plaintiffs were directed by their employer NWA to report to work. Plaintiffs did cross the said BRAC picket lines and continued to work during the BRAC strike which ended on December 14, 1970.

4. Pursuant to the provisions of Section 184 of the Act, NWA and Defendant Unions have established a System Board of Adjustment for resolution of disputes between them. On December 14, 1970, pursuant to a directive of the United States Court of Appeals for the 8th Circuit in certain litigation which had been instituted by NWA against Defendant IAMAW, the said System Board of Adjustment rendered a decision on the question, referred to it by the Court, "Whether IAM in the light of the no-strike provisions of the bargaining agreement, retained the right to instruct its members to honor the picket lines of a sister Union." The decision of said System Board of Adjustment was as follows:

"AWARD

IAM, in the light of the no strike provisions of the bargaining agreement does not retain the right to instruct its members to honor the picket lines of a sister Union."

A true copy of the aforesaid opinion and Award of the System Board of Adjustment is attached as Exhibit A.

5. Shortly prior to the end of the BRAC strike, to wit on December 8, 1970, NWA and Defendant IAMAW entered into an agreement for return to work of IAMAW personnel captioned "Guidelines for Recall of Mechanics and Related Personnel Represented by IAMAW", which provided in relevant part as follows:

"VI. There will be no reprisals, recriminations, disciplinary actions, grievances or reprimands by either party against any employee represented by IAMAW because of any action or non-action during or arising from the strike."

6. On December 9, 1970 NWA and Defendant IAMAW entered into a further agreement which provided in part as follows:

"4. Northwest Airlines and the IAMAW, their members and their officers, will not initiate any further actions or proceedings in any court or before any agency or in any other forum seeking damages or other relief for any claim or cause arising out of the circumstances of the strike by the BRAC against Northwest Airlines which commenced on July 8, 1970."

7. On or about December 20, 1971, plaintiffs were both served with Charges and a notice of hearing to be held before a Union Trial Committee. True copies of these documents are attached hereto as Exhibits B and C.

8. Defendants, through their council, have agreed not to proceed further with said Charges pending final decision in this cause. If the final decision in this cause permits Defendants to do so they will proceed with trial of Plaintiffs

for their conduct in crossing the BRAC picket lines as aforesaid. If found guilty, Plaintiffs would be subject to disciplinary action imposed by Defendant Unions, which disciplinary action could take the forms of a monetary fine, disqualification from holding Union office, or expulsion from Union membership.

9. On July 14, 1971, Floyd E. Smith, International President of Defendant IAMAW, rendered a decision in a case involving crossing of BRAC picket lines by one Thomas W. Ransdell, a true copy of which it attached hereto as Exhibit D.[1]

In Count I of this complaint, plaintiffs seeks enforcement of the NWA-IAMAW System Board of Adjustment Award which, they contend, prohibits the Union from retaliating against members who disregarded its instructions during the BRAC strike. Although defendants agree that an award of a system board of adjustment is enforceable in federal court, *International Association of Machinists* v. *Central Airlines*, 372 U.S. 682 (1963), they take the position in their Motion for Reconsideration that the conduct plaintiffs challenge is not covered by the instant Award.[2] This position is premised upon the Ninth Circuit decision in *Buzzard* v. *Local 1040, IAMAW*, 480 F.2d 35 (9th Cir. 1973). In that decision, the Circuit Court dealt with two appeals involving the System Board Award that is before this court. It held that the Award did not prohibit IAMAW from taking disciplinary action against members who crossed the BRAC picket lines. Since that decision, the Seventh Circuit has similarily concluded that the Award does not address itself to possible union discipline. *Adamszewski* v. *Local Lodge 1489, IAMAW*,

1. Subsequent to the finding of the Stipulation, defendants filed the affidavit of William Winpisinger, a General Vice President of the IAMAW. That affidavit has not been considered in light of the court's understanding that the parties agreed to be bound by the facts as stipulated.

2. In a prior summary judgment motion, defendants contended that plaintiffs were barred from suit to enforce the Award because they had failed to exhaust their internal union remedies. That position was rejected by our Order of April 25, 1972.

.....F.2d ....., (7th Cir., 4/12/74). Both the Ninth and Seventh Circuits relied on the fact that the question propounded to the Board was limited as follows:

> [W]hether IAM, in the light of the no-strike provisions of the bargaining agreement, retains the right to instruct its members to honor the picket lines of a sister union. Northwest Airlines, Inc. v. IAMAW, 442 F. 2d 244, 246 (8th Cir. 1970).

On the basis of *Buzzard* and *Adamszewski*, we hold that the Award does not address itself to the possibility of retaliatory action by IAMAW and that Count I which is premised upon a contrary conclusion must therefore be dismissed.

Count II of the complaint seeks enforcement of two settlement agreements between NWA and IAMAW dated December 8th and 9th of 1970.[3] The parties agreed that there would be no "reprisals, recriminations, disciplinary actions . . . by either party against any employe . . . because of *any action or non-action* during or arising from the strike" and that neither party would initiate any *"actions or proceedings in any court . . . or any other forum* seeking damages or any other relief for any claim or cause arising out of [the BRAC strike]." Plaintiffs contend that the charges preferred against them and the resulting disciplinary proceedings constitute a breach by IAMAW of these contractual commitments.

The defendants respond that suit on the basis of the agreements is barred by platintiffs' failure to pursue their internal union remedies. This issue was also raised in a prior motion for summary judgment. We then ruled that the allegation that ex-

3. A contract under § 204 of the Railway Labor Act is enforceable in federal court like the § 301 contract under the Labor Management Relations Act. *International Association of Machinists* v. *Central Airlines*, 372 U.S. 682, 692 (1963). It is also clear that a strike settlement agreement is a contract within the meaning of § 301 (*Retail Clerks, Local 128 & 633* v. *Lion Dry Goods, Inc.*, 369 U.S. 17 (1962), and that individual union members have the right to enforce a § 301 contract. *Smith* v. *Evening News Association*, 371 U.S. 195, 200 (1962).

haustion would be "futile, a sham, or unreasonable presented inherent factual questions." Since that ruling, the parties have stipulated to certain facts including the issuance of a July 14, 1971, decision by the International President of the IAMAW upholding fines against union members who crossed a BRAC picket line in 1970 contrary to union instructions. With the exception of the location of those picket lines and the individual union members charged, the circumstances underlying those charges are identical to the one involved in the charges against plaintiffs. In light of the decision of the International President, we find that requiring plaintiffs to exhaust their internal union remedies would be futile, a sham and unreasonable.

The defendants urge that, notwithstanding the fact that they signed the December agreement, they should not be held accountable when charges are filed by individual union members. Defendants, therefore, contend that individual union members, not the IAMAW, initiated these proceedings and that the IAMAW could not, by the December agreements or otherwise, deprive members of their right under the Union constitution to institute such charges.[4] Neither the Union constitution nor its interpretation is an issue before the court. The issue we must decide is one of law involving the interpretation and enforcement of the December agreements. If the December agreement is enforceable, as we think it is, that enforcement cannot be and is not affected by provisions in, or interpretation of, the Union's constitution. The December "no reprisal" agreements impose an implicit duty upon IAMAW not to process charges against (and thus harass) members who cross the picket line. To hold otherwise, would sanction the Union's attempt to avoid its contractual responsibilities. In effect, the employee-members who cross the picket line would be punished (at least to the extent of being subjected to the ordeal of a union trial) while the Com-

4. The Seventh Circuit did not squarely confront this issue in *Adamszewski*. That court upheld the right of union members to have their charges processed by finding no irreparable harm until the proceedings were completed and possible discipline imposed.

pany could not discipline employee-members who observed the picket line. IAMAW agreed that it would not discipline plaintiffs" . . . because of any *action or non-action* during or arising from the strike." We find that discipline is inherent in the requirement that plaintiffs undergo a union trial. It is indeed discipline to subject plaintiffs to such harassment, intimidation, fear, and the expenditure of time and money to defend themselves. By insisting that Union remedies be exhausted, IAMAW is acquiescing in, if not actively participating in, the discipline of plaintiffs for crossing BRAC's picket line. The Union agreed it would not inflict this result upon plaintiffs and the Systems Board ruled that it had no lawful right to do so.

The IAMAW's insistence upon "exhaustion" of intra-union remedies is misplaced where pursuing those remedies would be futile.[5] We have emphasized above that the Stipulation of Facts, binding the parties in this case, contains a 1971 decision by the International President which reflects that the Union does not intend to honor either its contractual commitment or the System Board's award. The Union International President did in the past as to other employee-members, and therefore must as to these plaintiffs, ignore the Union's contractual commitment in favor of their Local's wishes. A Union decision so adverse to plaintiffs would only result in future court proceedings seeking an injunction at that point in time. In this event,

5. The Ninth Circuit in *Buzzard* v. *Local 1040, IAMAW*, 480 F.2d 35 (9th Cir. 1973) finds two reasons for invoking the "exhaustion" doctrine in this kind of case: (1) the union may uphold plaintiffs' defense and therefore eliminate the need for judical intervention, and (2) that should plaintiffs be disciplined, a court would be aided by the union interpretation of its own constitution. Contrary to the finding of the Ninth Circuit, we feel that plaintiffs here have made a "sufficient showing that the intra-union remedies available to plaintiffs would be futile or inadequate to resolve their claims." Where pure questions of law are presented, as this case does, and where union interpretation of intra-union documents cannot possibly affect the result of our finding with respect to the December agreements, what could be more futile than requiring plaintiffs to undergo the ordeal of processing their cases to the highest union tribunal?

the Union proceedings would simply amount to a waste of time and expense because the basic legal question concerning the enforcement of the December agreements would ultimately be presented for conclusion by a court of competent jurisdiction.

Belatedly, defendants raised another defense to enforcement of the settlement agreements, namely that plaintiffs' action is barred because they violated the second proviso to Title 29 U.S.C. § 411(a)(4) of the Labor Management Reporting and Disclosure Act. That proviso states:

> That no interested employer . . . shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance or petition.

Defendants' position is premised upon the Seventh Circuit decision in *Adamszewski* upholding dismissal of an action by IAMAW members under the Labor Management Reporting and Disclosure Act on the ground that NWA financed their suit. Although it is undisputed that NWA is financing plaintiffs' suit before this court, the § 411 proviso is without application because Count II was instituted pursuant to the Railway Labor Act.[6] We, therefore, reject, without comment on the Seventh Circuit ruling, defendants' argument with regard to the § 411 proviso.

Being unpersuaded by any of defendants' arguments in opposition to Count II, we see no reason for denying plaintiffs' requested relief. We find that the terms of the settlement agreements set forth the clear intent to preclude the IAMAW from proceeding on the charges lodged against plaintiffs as well as from fining or otherwise disciplining them for actions arising out of the 1970 BRAC strike.[7] Since we find that the IAMAW has

6. The Seventh Circuit specifically noted in *Adamszewski* that the proviso does not preclude an action otherwise proper under the Railway Labor Act.

7. Although defendants have strenuously argued that the IAMAW is not responsible for the proceedings pending against plaintiffs, they do not argue that the language and the intent of the December agreements are too narrow or otherwise does not encompass prosecution of the charges against plaintiffs.

failed to comply with this commitment, the agreements will be enforced through the issuance of a permanent injunction. In this exercising the equitable jurisdiction of the court, we respectfully note our disagreement with the conclusion of the Seventh Circuit in *Adamszewski* that requiring plaintiffs to proceed through the Union disciplinary proceedings does not, in itself, constitute irreparable harm. To the contrary, we find that subjecting plaintiffs to the ordeal of a union trial and possible union appeals, the very prosecution of which is in violation of the settlement agreements, exposes them to narassment, criticism, and ridicule which constitute irreparable harm.

Now Therefore It is Ordered that the Motion for Summary Judgment filed by the IAMAW on June 15, 1972, is hereby denied; and

It Is Further Ordered that the Motion for Summary Judgment filed by plaintiffs on October 11, 1972, is hereby denied as to Count I and granted as to Count II; and that plaintiffs shall forthwith submit to the court a proposed order granting a permanent injunction restraining the IAMAW from instituting or conducting disciplinary proceedings of any kind, or otherwise retaliating against, harassing, intimidating or coercing plaintiffs because of their conduct in crossing the 1970 BRAC picket line; and

It Is Further Ordered that the Motion for Rehearing of Motion for Summary Judgment filed by the IAMAW on January 24, 1972, is hereby granted as to Count I and that Count I of the complaint is hereby dismissed; and

It Is Further Ordered that the Motion to Amend Stipulation of Facts filed by the IAMAW on March 25, 1974, is hereby denied.

/s/ ROBERT DEMASCIO
Robert E. DeMascio
United States District Judge

Dated: May 29, 1974

UNITED STATES DISTRICT COURT
Eastern District of Michigan
Southern Division

ROBERT F. VERVILLE and JOHN G. DEBRUYN,
Plaintiffs,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, a Labor Organization; DETROIT AIR TRANSPORT LODGE 141, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, a Labor Organization; AL LOUGHLEY; and E. G. MONTIE, Jointly and Severally,
Defendants.

Civil Action No. 37650

ORDER GRANTING PERMANENT INJUNCTION

At a session of said court, held in the Federal Building, Detroit, Michigan, on the 11th day of June, 1974.

Present: Hon. ROBERT E. DEMASCIO, United States District Judge.

This cause having been presented to the Court on an agreed stipulation of facts and the Court having considered the matter and expressed its conclusions of law in its Memorandum and Order dated May 29, 1974.

It Is Ordered that defendants International Association of Machinists and Aerospace Workers and its Detroit Air Transport Lodge 141 shall be and hereby are permanently enjoined and restrained from instituting or conducting disciplinary pro-

ceedings of any kind, or otherwise retaliating against, harassing, intimidating or coercing plaintiffs because of their conduct in crossing the 1970 picket line of the Brotherhood of Railway and Airline Clerks.

HON. ROBERT E. DEMASCIO
United States District Judge

NO. 74-231

OCT 1 1974

MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1974

R. J. ADAMSZEWSKI, F. BECKER, P. BORN, C. BRAMMEL, RAY BROO, GERALD O. CROCETTI, RAY FLAKUS, PAUL GARZA, CECIL H. LEGATE, STEVE MANKO, ALBERT T. MARINO, WILLIAM McCLARY, GREGORY A. PANKOW, M. PELOSE, RICHARD PLETT, R. RUSSELL, ARDITH A. SMITH, HERBERT W. SUNBERG, and all other Northwest Airline, Inc. employees and all other persons who have been notified to appear for a certain "trial" on January 31, 1972 at 50 West Oakton Street, Des Plaines, Illinois,

Petitioners,

vs.

LOCAL LODGE 1487, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, THOMAS PAUL, WILLIAM AUSTIN, KEN THIEDE, and MICHAEL J. PEAT,

Respondents.

BRIEF FOR LOCAL LODGE 1487, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, THOMAS PAUL, WILLIAM AUSTIN, KEN THIEDE, AND MICHAEL J. PEAT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-231

R. J. ADAMSZEWSKI, F. BECKER, P. BORN, C. BRAMMEL, RAY BROO, GERALD O. CROCETTI, RAY FLAKUS, PAUL GARZA, CECIL H. LEGATE, STEVE MANKO, ALBERT T. MARINO, WILLIAM McCLARY, GREGORY A. PANKOW, M. PELOSE, RICHARD PLETT, R. RUSSELL, ARDITH A. SMITH, HERBERT W. SUNBERG, and all other Northwest Airline, Inc. employees and all other persons who have been notified to appear for a certain "trial" on January 31, 1972 at 50 West Oakton Street, Des Plaines, Illinois,

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QUESTIONS PRESENTED:

I. Whether Northwest Airlines, Inc. is an "interested employer" within the meaning of 29 U.S.C. Sec. 411 (a)(4) so that its direct financing of this litigation

is violative of the second proviso of Section 411(a)(4) and whether this action so financed can be maintained pursuant to 29 U.S.C. Sec. 412.

II. Whether petitioners are entitled to injunctive relief where there is no showing of irreparable harm or inadequacy of legal remedies and whether such injunctive relief can be based on a System Board of Adjustment Award which expressly excluded consideration of matters of discipline of individual members which was the basis of the complaint herein.

STATEMENT OF THE CASE

Petitioners' statement of the case is substantially correct except as follows:

1. The statement that Petitioners filed this suit to enjoin the disciplinary proceedings "seeking to avoid the *in terrorem* effect of the union trials" (Pet. Br. p. 6) is open to serious question as a statement of fact. In view of the stipulation filed in this cause that Northwest Airlines, Inc. (NWA) financed the litigation (Pet. Br. p. 7), it appears that the active role was NWA's.

2. The order entered on January 26, 1972 by the district court was an agreed order providing that Respondents would hold in abeyance the disciplinary proceedings complained of until "final disposition of the issues and matters" of this case (App. 62-4)[1]

3. The court below stated in a dictum that the second proviso of 29 U.S.C. Sec. 411(a)(4) does not preclude relief sought pursuant to the Railway Labor Act (Pet. Br. p. A15). However, the court below *held* that the SBA

[1] Refers to the Appendix filed in the court below.

Award in the case at bar "will not support the relief requested by appellants" because that decision was not based on any consideration of matters of discipline of individuals as contrasted to determination of whether the International Association of Mechanics and Aerospace Workers (IAMAW), in the light of the no-strike provisions in the collective labor agreement with NWA, retained the right to instruct its members to honor the picket lines of a sister union.

REASONS FOR DENYING THE WRIT

Petitioners urge as a reason for granting this writ the multiplicity of litigation arising out of the fact situation in the case at bar. They draw the Court's attention to six cases arising from those facts. As NWA is financing the litigation in the case at bar, it is reasonable to infer that it is financing the companion litigation as well.[2] Thus, the "multiplicity" referred to by Petitioners is more illusory than substantive; nor does such alleged "multiplicity" without more present questions requiring decision by this Court where there is no conflict between the courts of appeal which have decided the cases arising out of the same fact situation.[3]

The second reason advanced by Petitioners for granting the writ is equally without merit, when examined free of Petitioners' rhetoric (see last paragraph, Pet. Br. p. 9). The lurid language in the last sentence of the paragraph referred to and denominated as a recurring question of union conduct "in violation of law and contract by disciplining members for working under a no-

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[2] See *Verville, et al.* v. *IAMAW, et al.* ..... F. Supp. ....,... (E.D. S.D. Mich., 1974) (Pet. Br. A35).

[3] The case below, 496 F.2d 777 (7th Cir. 1974), *Buzzard* v. *Local Lodge 1040*, etc., 480 F.2d 35 (9th Cir. 1973).

strike contract and unilaterally disregarding a no-strike and no-reprisal agreement (Pet. Br. p. 10) must be read in conjunction with the affidavit of IAMAW Vice-President Winpisinger (App. 107-09). That affidavit sets out the facts that the Guidelines, Paragraph VI (what Petitioners refer to as the no-reprisal agreement) contained the word "fines" as first drafted and that word was eliminated in the language agreed upon, and that the President of NWA had agreed that paragraph VI would not apply to any action taken under the IAMAW Constitution against a member. The charges against Petitioners of conduct unbecoming union members (App. 17-35) were predicated on the IAMAW Constitution. That constitution provides for hearing of such charges by a trial committee of a local lodge, report of the trial committee to the local lodge, which decides on the charges and further provides for appeal from the decision of the local lodge to the IAMAW President and an appeal from that officer to the IAMAW Executive Committee. Appeal may be taken from the executive committee to the Grand Lodge Convention of the Union or to the membership at large by submission to a referendum (App. 101-104).

As this litigation was disposed of below *in limine* on Respondents' motion for summary judgment treated by the district court as a motion to dismiss raising matters in abatement there was no determination of the fact as to whether NWA and IAMAW had entered into a "no-reprisal agreement". That is Petitioners' characterization. The lack of any finding of fact in this record as to whether or not a "no-reprisal agreement" exists which prohibited charges under IAMAW constitution forces the conclusion that this case does not present an opportunity for this Court to determine any question of federal labor law.

I.

The Court below's denial of injunctive relief raises no constitutional or federal question.

Petitioners contend that Paragraph VI of December 8, 1970 unsigned "Guidelines Agreement" between NWA and IAMAW constitutes a "no-reprisal agreement" under the facts of the case at bar and predicate their petition on the assumption that the agreement was a proven fact in the Court below. The issue was joined as to whether the alleged "no-reprisal agreement" was such an agreement in the trial court (App. 96-97, 107-121) but was not passed upon by either the district court or the court below because the district court dismissed the action (Pet. Br. A27) and the court below affirmed. Thus, it is clear that there was no determination on the merits of Petitioners' contention that Paragraph VI is in fact such a "no-reprisal agreement". This leads to the obvious conclusion that Petitioners' argument for injunctive relief to enforce what they contend is a "no-reprisal agreement" stands on a pillar of sand.

Secondly, Petitioners contend that the System Board of Adjustment Award provides them with a ground for injunctive relief. The short answer to this contention is given by the court below when it stated:

> "However, the SBA award will not support the relief requested by appellants. The SBA decision expressly stated that the award was not based on any consideration of 'matters of discipline *** of individuals for refusing to cross picket lines of sister unions.' Opinion of NWA/IAMAW System Board of Adjustment 5 (1970). Rather, the focus of the SBA was on the no-strike clause and its effect on union conduct. *Id.* at 2, 4, 5 The issue presented to the SBA by the Court of Appeals for the Eighth Circuit was:

> [W]hether IAM, in the light of the no-strike provisions of the bargaining agreement retains the right to instruct its members to honor the picket lines of a sister union.

Northwest Airlines, Inc. v. *International Association of Machinists and Aerospace Workers,* 442 F. 2d 244, 246 (8th Cir. 1970). The decision reached by the SBA was that IAM did not retain the right to instruct its members to honor the picket lines of a sister union. Opinion of NWA/IAMAW System Board of Adjustment, *supra* at 11. Therefore, the SBA award is limited in scope and it does not give appellants a cause of action to enjoin the disciplinary hearings. Since the injunctive relief sought could not be based on the SBA award, the district court committed no error in dismissing that claim. *Accord, Buzzard* v. *Local Lodge 1040 International Association of Machinists and Aerospace Workers, supra* at 40." (Pet. Br. A16-17)

Furthermore, the court below determined that Petitioners failed to show that they had no adequate remedy at law and that they would suffer irreparable harm. Such irreparable harm, as Petitioners allege, arising from the proposed disciplinary proceedings to their standing as member of IAMAW and to their employment by NWA was completely speculative. The court below stated:

> "None of the [petitioners] has had to undergo disciplinary hearings in this matter. None has been fined, suspended or in any way sanctioned by the union. It is anomalous for appellants to argue that their employment with NWA may be jeopardized when, in fact, NWA is financing this suit. Similarly, it is difficult to see how [petitioners'] position within the union will be jeopardized to any greater extent by requiring them to attend the disciplinary

proceedings than it would be by issuing an injunction in their behalf against the holding of such proceedings." (Pet. Br. A18-19).

Petitioners make the accurate statement that both the court below and *Buzzard, supra,* held that the SBA award does not support a cause of action for injunctive relief (Pet. Br. p. 13). What they fail to point out to this Court, however, is that both the Seventh and Ninth Circuit Courts of Appeal analyzed the SBA award as having no application to the case at bar, dealing, as that award did, only with union conduct and not conduct of individual union members, the subject matter of the case at bar.

The logical conclusion, therefore, is that all of Petitioners' discourse on pages 13 to 16 of their brief is without point because it is all directed towards the judicial enforcement of *applicable* SBA awards. The SBA award here is not applicable to the case at bar by the express terms of the award itself. It follows, therefore, Petitioners have no cause of action for injunctive relief based on the SBA award in the case at bar.

II.

The Court below has correctly construed 29 U.S.C. Sec. 411(a)(4) in holding NWA an "interested employer."

The court of first instance dismissed Petitioners' action on Respondents' motion for summary judgment treated as a motion to dismiss which raised the matter in abatement of NWA financing this litigation contrary to the second proviso of U.S.C. Sec. 411(a) (4). The court below affirmed and in a closely reasoned analysis of the legislative history of that section (Pet. Br. A8-15)

held that the district court committed no error in deciding that the second proviso of 411(a) (4) barred this cause of action (Pet. Br. A14-15). Respondents rest on the court below's analysis of the legislative history of this section and the court below's statement adopting respondents' contentions in holding that NWA is a "directly interested" employer in this litigation.

Petitioners rely on *Farowitz* v. *Associated Musicians of Greater N.Y., Local 802,* 241 F. Supp. 895 (S.D.N.Y. 1965) as they did in the court of first instance and in the court below. The court below distinguished *Farowitz* from the case at bar (Pet. Br. A10) as did the district court (Pet. Br. A26).

In addition to the reasons cited by the court below distinguishing *Farowitz* from the case at bar that case is distinguishable on several additional grounds:

1. In *Farowitz* the plaintiff was expelled from the union and the court found that he was thus denied the right to pursue his career as a musician (241 F. Supp. 909). Here petitioners' employment by NWA and membership in IAMAW and the respondent local lodge is in no way affected (App. 96-6, 105-06).

2. In *Farowitz* the plaintiff denied that he was getting any support from his employer or employer organization (241 F. Supp. 903). In the case at bar petitioners "freely concede that NWA is financing" this litigation (Pet. Br. p. 17).

3. In *Farowitz* the court found that the plaintiff had no knowledge that his employers were aiding in his prosecution of that suit (241 F. Supp. 909). Here the petitioners have knowledge of the fact of NWA's participation.

4. In *Farowitz* the court predicated its holding on whether the employer there was an "interested

employer" under the second proviso of 411 (a) (4) on the absence of knowledge on the part of the plaintiff that he was being employer-aided in that litigation. The court stated (241 F. Supp. at 909):

> "In the absence of knowledge on the part of *Farowitz* that [the employers] were aiding in the prosecution of this suit, I cannot conclude that his right to sue would be imperilled by anything they did. This is consistent with the policy of construing provisos strictly to preserve the general policy of the enacting clause of the provision. In conclusion, the plaintiff has suffered a substantial wrong against which there is no valid defense. He is entitled to pursue music as a career if he wishes without interference with his right of free speech."

Petitioners' reliance on *Farowitz,* so clearly distinguished from the case at bar, should be no more availing before this Court than it was before the court below. They attempt to overcome the court below's reasoning distinguishing *Farowitz* by observing the court's analysis as to the reason for the participation of NWA in this litigation by financing it for the purpose of promoting the interest of dissidents against their union is unrealistic (Pet. Br. p. 19). The naivete of that statement is compounded by Petitioners' argument that "a union's representational strength depends upon the fair treatment which it accords its members within the confines of the law * * *. The solidarity and moral fiber of the union will be strengthened by a decision which holds the union and its hierarchy to its lawful obligations. A government of laws has never been considered as divisive as one of men" (Pet. Br. pp. 19-20).

While recent events in our national history lead Respondents to agree that a government of laws is less divisive than one of men, the simple unvarnished truth in the case at bar is that NWA is financing this litigation so that Petitioners and likeminded employees in the NWA system may refuse to comply with their bargaining representative's direction of concerted activity without penalty.

The rationale of the second proviso of Section 411(a)(4) is consistent with the entire scheme of the national labor policy which statutorily encourages collective bargaining by exclusive representatives chosen by the majority of employes in an appropriate bargaining unit. If the prohibition against an interested employer financing and encouraging legal action by its employees against their collective bargaining representative were not enforced, the NWA could and (as demonstrated here) would undermine the authority and discipline of IAMAW in the crafts and classes of which Petitioners are a part.

Why Congress prohibited interested employers from financing or encouraging litigation (in which employers are not a party) by employees who sue labor organizations of which they are members as a concomitant part of the national labor policy is illustrated in *NLRB* v. *Allis Chalmers Manufacturing Company,* 388 U.S. 175 (1966). This Court concluded that a union did not commit an unfair labor practice by fining a member for crossing a picket line established by that union. While the picket line crossed here was that of a sister union, the underlying principles are equally applicable. The Court stated (388 U.S. at 182):

> "National labor policy has been built on the premise that by pooling the economic strength and acting through a labor organization freely chosen by the

majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees. 'Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents . . .' *Steele* v. *Louisville & N.R. Co.*, 323 U.S. 192, 202 . . . *The employee may disagree with many of the union decisions but is bound by them.* 'The majority-rule concept is today unquestionably at the center of our federal labor policy.' 'The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.' *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338. . . . *Integral to this federal labor policy has been the power in the chosen union to protect against erosion* [*of*] *its status under that policy through reasonable discipline of members who violate rules and regulations governing membership.* That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving the agreement upon its terms, and '[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . .' *Provisions in union constitutions and bylaws for fines and expulsion of recalcitrants, including strikebreakers, are therefore commonplace and were commonplace at the time of the Taft-Hartley amendments.*" (Emphasis supplied)

We add, and also at the time of enactment of LMRDA on the same date.

The concept of a union's self-protective discipline power over its members is expressed in the proviso of 29 U.S.C. Sec. 411(a) (2) insofar as that section shall not

> "• • • • be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibililties of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

That IAMAW shall be able to effectively represent its membership, the provisions of the IAMAW Constitution (App. 101-04) conferring the right on fellow members to charge the Petitioners with conduct unbecoming members of the union and the right of the respondent local lodge to discipline them on their being found guilty, must not be negated.

It is submitted that this is so even though it was subsequently determined by the SBA that the IAMAW did not retain the right to instruct its members not to cross a picket line in view of the no-strike agreement with NWA. Otherwise, Petitioners and other members of the respondent local lodge would be invited to second-guess their union leadership and make their own determination as to the validity of a union directive in NWA-financed litigation. In that event NWA would certainly consider its investment in this litigation paying handsome dividends.[4]

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[4] Compare *Cox* v. *Northwest Airlines, Inc.*, 319 F. Supp. 92, 94-95 (D. Minn. 1970) NWA's financing the litigation here bears striking similarity to the obligations it assumed in *Cox*.

It is further submitted that the Court should take judicial notice of the mutual aid pact approved by the Civil Aeronautics Board[5] of which pact NWA is a member and under which the non-struck signatories-carriers by air contributed cash payments to NWA during the period of the Brotherhood of Railway and Airline Clerks (BRAC) strike against NWA. The effect of this arrangement was to materially reduce the economic impact of the BRAC strike. IAMAW in its own self-interest, as representative of NWA employees, including Petitioners, determined on the policy of assisting BRAC because if NWA, with the assistance of the mutual aid pact payments should successfully resist the BRAC strike IAMAW's economic strength, as a representative of NWA employees, would be materially lessened. Thus, it is submitted, IAMAW's instructions to its members to not cross BRAC picket lines when issued were "in good faith" and had "honesty of purpose" on or about July 8, 1970 at the commencement of the BRAC strike. It was on December 14, 1970 that SBA reached the conclusion that IAMAW did not retain that right in light of its no-strike agreement with NWA (App. 46).

Finally, Petitioners argue that whatever interest NWA may have in the litigation it cannot rise to the status of being an "interested employer" within the meaning of the second proviso of Section 411(a) (4) because the "real concrete interest involved in this case involves solely the employees who have been summoned to trial" (Pet. Br. p. 20). This argument has a hollow sound in view of the fact that it is only NWA, in its financing this litigation who is complaining. The district court

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[5] 29 Civil Aeronautics Board Reports 168; See dissent Members Minetti 29 CAB 170; text of pact 29 CAB 190. NWA became a signatory on or before March 7, 1960, 31 CAB 977.

dismissed this litigation without prejudice to Petitioners' right to commence further action not financed by NWA (Pet. Br. A27). This has not been done to date though the invitation was issued to Petitioners nine months ago.

CONCLUSION

There is no confusion existing in the federal judiciary in construing and applying the second proviso of 29 U.S.C. Sec. 411(a) (4) to the facts in the case at bar. The decision of the court below and of the Ninth Circuit in *Buzzard,* supra, are in accord on nonavailability of injunctive relief to the petitioners. *Buzzard* did not consider or construe the second proviso in 29 U.S.C. Sec. 411(a) (4) as that contention was not raised in that case (480 F. 2d 35 at 39, f.n. 13). Whether or not Paragraph VI of the Guideline Agreement of December 8, 1970 is applicable to the case at bar has not been determined on its merits. The SBA award is clearly shown to be not applicable to the case at bar by its own terms. Thus, this case presents no "important and recurrent questions of federal labor law" and Respondents respectfully request this Court to deny the petition for a writ of certiorari to be issued to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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